Sh. Sanjeev Lal Etc. Etc vs Commissioner Of Income Tax ... on 1 July, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3589, 2015 (5) SCC 775, 2014 AIR SCW 4706, 2014 (2) WLC(SC)CVL 304, 2014 (8) SCALE 432, (2015) 2 MAD LW 905, AIR 2014 SC (CIVIL) 2353, (2014) 3 PAT LJR 324, (2014) 365 ITR 389, (2014) 5 MAD LJ 758, (2014) 3 PUN LR 769, (2014) 8 SCALE 432, (2014) 3 JLJR 291

Author: Anil R. Dave

Bench: Shiva Kirti Singh, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.5899-5900 OF 2014
(Arising out of SLP (c) Nos.16958-59 of 2013)

Sh. Sanjeev Lal Etc. Etc. Appellants

Versus

Commissioner of Income Tax, Chandigarh & Anr. Respondents

JUDGMENT

ANIL R. DAVE, J.

Leave granted.

As facts of both the appeals are similar, at the request of the learned counsel appearing for the parties, both the appeals had been heard together.

Being aggrieved by the judgments delivered by the High Court of Punjab and Haryana in ITA Nos. 153 & 154 of 2012 dated 29th January, 2013, these appeals have been preferred by the assessees.

The facts giving rise to the present litigation, in a nutshell, are as under:

A residential house, being House No. 267 situated in Sector 9-C, Chandigarh, was a self acquired property of Shri Amrit Lal, who had executed a Will whereby life interest in the aforestated house had been given to his wife and upon death of his wife, the house was to be given in favour of two sons of his pre-deceased son - late Shri Moti Lal and his widow. One of the above stated grand children and the daughter-in-law of Shri Amrit Lal are the appellants in these appeals. Upon death of Shri Amrit Lal, possession of the house was given to his widow. His widow, Smt. Shakuntla Devi expired on 29th August, 1993. Upon death of Smt. Shakuntla Devi, as per the Will, the ownership in respect of the house in question came to be vested in the present appellants and another grandchild of late Shri Amrit Lal.

The appellants had decided to sell the house and with that intention they had entered into an agreement to sell the house with Shri Sandeep Talwar on 27th December, 2002 for a consideration of Rs. 1.32 crores. Out of the said amount, a sum of Rs.15 lakhs had been received by the appellants by way of earnest money. As the appellants had decided to sell the house in question, they had also decided to purchase another residential house bearing house No. 528 in Sector 8, Chandigarh so that the sale proceeds, including capital gain, can be used for purchase of the aforestated House No. 528. The said house was purchased on 30th April, 2003 i.e. well within one year from the date on which the agreement to sell had been entered into by the appellants.

The validity of the Will had been questioned by Shri Ranjeet Lal, who was another son of the deceased testator Shri Amrit Lal, by filing a civil suit, wherein the trial court, by an interim order had restrained the appellants from dealing with the house property. During the pendency of the suit, Shri Ranjeet Lal expired on 2nd December, 2000 leaving behind him no legal heirs. The suit filed by him had been dismissed in May, 2004 as there was no representation on his behalf in the suit.

Due to the interim relief granted in the above stated suit, the appellants could not execute the sale deed till the suit came to be dismissed and the validity of the Will was upheld. Thus, the appellants executed the sale deed in 2004 and the same was registered on 24th September, 2004. Upon transfer of the house property, long term capital gain had arisen, but as the appellants had purchased a new residential house and the amount of the capital gain had been used for purchase of the said new asset, believing that the long term capital gain was not chargeable to income tax as per the provisions of Section 54 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the appellants did not disclose the said long term capital gain in their return of income filed for the Assessment Year 2005-2006.

In the assessment proceedings for the Assessment Year 2005-2006 under the Act, the Assessing Officer was of the view that the appellants were not entitled to any benefit under Section 54 of the Act for the reason that the transfer of the original asset, i.e. the residential house, had been effected on 24th September, 2004 whereas the appellants had purchased another residential house on 30th April, 2003 i.e. more

than one year prior to the purchase of the new asset and therefore, the appellants were made liable to pay income tax on the capital gain under Section 45 of the Act. Relevant portion of Section 54 of the Act reads as under:

"54. PROFIT ON SALE OF PROPERTY USED FOR RESIDENCE.

(1) Subject to the provisions of sub-section (2), where in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say, –

(i) If the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

(ii) If the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain." Upon perusal of Section 54(1) of the Act, it is very clear that relief under Section 54 of the Act in respect of the long term capital gain can be availed only if a residential house i.e. a new asset is purchased within one year before or within two years after the date on which the transfer of the residential house/original asset takes place. In the instant case, the residential house had been transferred by the appellants-assessees on 24th September, 2004 whereas they had purchased another house on 30th April, 2003. Thus, the new asset was purchased more than one year prior to the date on which the transfer in respect of the residential house had been effected.

For the aforestated reasons, the Assessing Officer did not grant benefit under Section 54 of the Act and therefore, the assessment order had been challenged by the appellants before the Commissioner of Income Tax (Appeals). The appeal, so far as it pertained to the benefit under Section 54 of the Act was concerned, had been dismissed and therefore, the appellants had approached the Income Tax Appellate Tribunal. The Tribunal also upheld the orders passed by the Commissioner and therefore,

the appellants had approached the High Court by filing appeals under Section 260 A of the Act, which were dismissed by virtue of the impugned judgments. Thus, the appellants are in appeal before this Court. The learned counsel appearing for the appellants had mainly submitted that the authorities below and the High Court had committed an error in interpretation of Section 54 of the Act. According to him, though the property in question had been apparently transferred on 24th September, 2004 and the new asset i.e. new residential house had been purchased on 30th April, 2003 i.e. more than one year prior to the date on which the property had been sold, the authorities ought to have considered the date on which the agreement to sell had been effected by the appellants for transfer of the property in question as the date of transfer of the house/original asset. The said agreement had been signed on 27th December, 2002 i.e. which was well within the period prescribed under Section 54 of the Act. If one considers 27th December, 2002 as the date on which the property had been transferred or that a right in the property had been transferred, the appellants would become entitled to the benefit under Section 54 of the Act.

So as to substantiate his submissions, learned counsel for the appellants had submitted that the appellants wanted to transfer the property in question and therefore, they had entered into an agreement to sell on 27th December, 2002, but unfortunately they could not execute the sale deed on account of the litigation which was pending in respect of the property in question and due to an order restraining the appellants from dealing with the property. In view of the order passed by the civil court, the appellants could not execute the sale deed and the delay was only on account of a factor which was beyond the control of the appellants. According to the learned counsel appearing for the appellants, the date on which the agreement to sell had been executed ought to have been treated as the date of transfer. He had referred to the provisions of Section 2(47) of the Act which defines the term “transfer”. The term “transfer” has been given an inclusive definition and according to the said definition, whenever there is an extinction of any right in respect of a capital asset, such an extinction would mean transfer of the property. He had, therefore, submitted that by virtue of the agreement to sell, a right had been created in favour of the buyer of the property and certain right in respect of the residential house, which the appellants had, had been extinguished and therefore, 27th December, 2002 ought to have been considered as the date of transfer.

The learned counsel had also relied upon certain judgments delivered by different High Courts to support his submissions.

On the other hand, the learned counsel appearing for the Revenue Authorities had vehemently submitted that by mere execution of an agreement to sell, right of the vendor/transferor in respect of the property cannot be extinguished. According to him, no sale of the property in question had been effected, when the agreement to sell had been executed on 27th December, 2002. According to him, the appellants had sold the original asset on 24th September, 2004 and had purchased a new house/new asset on 30th April, 2003 i.e. one year before sale of the original asset and therefore, the benefit under Section 54 of the Act could not have been availed by the appellants and therefore, the Revenue Authorities as well as the High Court were absolutely correct by not granting the benefit claimed by the appellants.

We had heard the learned counsel at length and have also considered the relevant provisions of the Act and the judgments cited by the learned counsel.

Upon plain reading of Section 54 of the Act, it is very clear that so as to avail the benefit under Section 54 of the Act, one must purchase a residential house/new asset within one year prior or two years after the date on which transfer of the residential house in respect of which the long term capital gain had arisen, has taken place.

In the instant case, the following three dates are not in dispute. The residential house was transferred by the appellants and the sale deed had been registered on 24th September, 2004. The sale deed had been executed in pursuance of an agreement to sell which had been executed on 27th December, 2002 and out of the total consideration of Rs.1.32 crores, Rs. 15 lakhs had been received by the appellants by way of earnest money when the agreement to sell had been executed and a new residential house/new asset had been purchased by the appellants on 30th April, 2003. It is also not in dispute that there was a litigation wherein the Will of late Shri Amrit Lal had been challenged by his son and the appellants had been restrained from dealing with the house in question by a judicial order and the said judicial order had been vacated only in the month of May, 2004 and therefore, the sale deed could not be executed before the said order was vacated though the agreement to sell had been executed on 27th September, 2002.

If one considers the date on which it was decided to sell the property, i.e. 27th December, 2002 as the date of transfer or sale, it cannot be disputed that the appellants would be entitled to the benefit under the provisions of Section 54 of the Act because long term capital gain earned by the appellants had been used for purchase of a new asset/residential house on 30th April, 2003 i.e. well within one year from the date of transfer of the house which resulted into long term capital gain. The question to be considered by this Court is whether the agreement to sell which had been executed on 27th December, 2002 can be considered as a date on which the property i.e. the residential house had been transferred. In normal circumstances by executing an agreement to sell in respect of an immoveable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforestated question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word “transfer” in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word “transfer” is as under:

> “2(47) “transfer”, in relation to a capital asset, includes,-
>
> (i).....

(ii) the extinguishment of any rights therein; or ....." Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforestated definition, let us look at the facts of the present case where an agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of Rs. 15 lakhs had been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so. In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet Lal, challenging the validity of the Will, had been dismissed. In the light of the aforestated facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case at hand.

In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. Though it has been very often said that common sense is a stranger and an incompatible partner to the Income Tax Act and it is also said that equity and tax are strangers to each other, still this Court has often observed that purposive interpretation should be given to the provisions of the Act. In the case of Oxford University Press v. Commissioner of

Income Tax [(2001) 3 SCC 359] this Court has observed that a purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax. It has also been said that harmonious construction of the provisions which subserve the object and purpose should also be made while construing any of the provisions of the Act and more particularly when one is concerned with exemption from payment of tax. Considering the aforestated observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit under Section 54 of the Act.

Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immoveable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002. The sale deed could not be executed for the reason that the appellants had been prevented from dealing with the residential house by an order of a competent court, which they could not have violated.

In view of the aforestated peculiar facts of the case and looking at the definition of the term 'transfer" as defined under Section 2(47) of the Act, we are of the view that the appellants were entitled to relief under Section 54 of the Act in respect of the long term capital gain which they had earned in pursuance of transfer of their residential property being House No. 267, Sector 9-C, situated in Chandigarh and used for purchase of a new asset/residential house.

The appeals are, therefore, allowed with no order as to costs. The impugned judgments are quashed and set aside and the Authorities are directed to re-assess the income of the appellants for the Assessment Year 2005-2006, after taking into account the fact that the appellants were entitled to the relief, subject to fulfilment of other conditions.

.....J. (ANIL R. DAVE) .....J. (SHIVA KIRTI SINGH) NEW DELHI JULY 01, 2014.