
(1990) 186 ITR 536

Madras High Court

Case No: Tax Case No. 672 of 1979 (Reference No. 383 of 1979)

Commissioner of
Income Tax

APPELLANT

Vs

Kamala Ranganathan

RESPONDENT

Date of Decision: March 13, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 54

Citation: (1990) 186 ITR 536

Hon'ble Judges: V. Ratnam, J; K.A. Thanikkachalam, J

Bench: Division Bench

Advocate: C.V. Rajan, for the Appellant; P.P.S. Janardhana Raja for M/S Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

Ratnam, J.

The assessee is an individual and on December 15, 1973, she sold a house for Rs. 90,000 and that resulted in a net capital

gain of Rs. 29,900. The assessee claimed the benefit of exemption u/s 54 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on

the ground that another property was purchased from the Tamil Nadu Housing Board for Rs. 24,000. The Income Tax Officer negated this claim

of the assessee on the ground that a portion of the building sold by the assessee had been let out till the date of sale and the income therefrom had

also been subjected to assessment. However, on appeal by the assessee, the Appellate Assistant Commissioner took the view that the property

sold by the assessee was mainly used for purposes of residence of the assessee and the provisions of Section 54 of the Act will apply and in that

view, the Income Tax Officer was directed to recompute the capital gains after allowing the assessee the benefit of exemption u/s 54 of the Act.

On further appeal by the Revenue to the Tribunal, it found that the area which was under the occupation of the assessee was 1,053 sq. ft., while

the area let out to the tenant was 832.31 sq. ft. and thus a major portion of the property was mainly used for purposes of residence of the assessee

and, therefore, the order of the Appellate Assistant Commissioner deserved to be upheld. That is how the following question of law has been

referred to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the appellate Tribunal was right in holding that the assessee is entitled to exemption u/s

54 of the Act, in respect of the capital gains on the transfer of the property No. 17, Dr. Nair Road, Madras, for the assessment year 1974-75 ?

2. Learned counsel for the Revenue, relying upon the decision in Commissioner of Income Tax, Tamil Nadu-III Vs. C. Jayalakshmi, , contended

that the entire ground floor had been let out and that could not be considered to be a small portion of the building and, therefore, it cannot be held

that the building in question was mainly used for purpose of residence of the assessee. However, on the facts found by the Tribunal and on the

decision relied on by learned counsel for the Revenue, we are unable to accept this contention. There is no dispute that in this case income has

resulted to the assessee from a capital asset chargeable under the head ""Income from capital gains"" and that the assessee had, within a period of

one year before or after the date of the sale of the capital asset, purchased a house property for purposes of her own residence. The only

controversy debated before the authorities was the user by the assessee of the house in the two years immediately preceding the date of transfer

mainly for purposes of her own or her parents" residence. The factual finding of the Tribunal with reference to the available area in the ground and

the first floors has not been questioned or even otherwise established to be erroneous in some manner. It is with reference to the entirety of the

capital asset disposed of by the assessee, the question whether the assessee or a parent of hers was using the house mainly for her own purposes

or her parents' own residence. That this is the proper approach has been pointed out even in the very decision relied on by learned counsel for the

Revenue. However, on the question whether the house was being used by the assessee or a parent of hers mainly for purposes of her own or her

parents' own residence, it is seen that the meaning to be given to the expression ""mainly"" is ""in the main"", ""principally"" or ""chiefly"". In the house

comprising 1,885.31 sq. ft., indisputably the assessee was in occupation to an extent of 1,053 sq. ft. in the first floor as per the finding of the

Tribunal and that cannot be considered not to constitute user by the assessee mainly for purposes of her own residence. The underlying principle in

Section 54 of the Act is that the benefit of that provision should not be lost to the owner of a house merely on the ground that she had let out a

comparatively smaller portion of the building for rent. It is significant that even in Commissioner of Income Tax, Tamil Nadu-III Vs. C.

Jayalakshmi, , it has been accepted as a general proposition that the use of the word ""mainly"" in section 54 of the Act was intended to see that the

benefit of that provision was not lost merely because a small portion of the building had been let out for rent. However, on the acceptance of the

factual finding in that case that the part let out was not a small portion of the building it was held that the benefit of section 54 of the Act could not

be availed of by the assessee. Earlier, it has been pointed out that in this case the assessee had been found to have occupied the first floor, a larger

area than the ground floor, which was let out, and it is, therefore, clearly established in this case that the assessee had used the premises mainly for

her residence for the requisite period. Under those circumstances, undoubtedly, the assessee was entitled to claim the benefit of section 54 of the

Act, as the decision in Commissioner of Income Tax, Tamil Nadu-III Vs. C. Jayalakshmi, would, on the facts of this case, be inapplicable. We,

therefore, answer the question referred to us in the affirmative and against the Revenue. The assessee will be entitled to the costs of this reference.

Counsel's Rs. 500.