(2013) 11 DEL CK 0384

Delhi High Court

Case No: Income Tax Appeal No. 505 of 2013

Commissioner of Income Tax-V		APPELLANT
	Vs	
Shri Ashok Kumar Ralhan		RESPONDENT

Date of Decision: Nov. 22, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 50C(1), 54F, 68

Citation: (2014) 360 ITR 575

Hon'ble Judges: Sanjiv Khanna, J; Sanjeev Sachdeva, J

Bench: Division Bench

Advocate: N.P. Sahni, Mr. P. Roy Chaudhuri and Mr. Nitin Gulati, for the Appellant; Prakash Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Sanjiv Khanna

1. This appeal by the Revenue u/s 260A of the Income Tax Act, 1961 (Act, for short), deserves dismissal at the admission stage itself. The Assessing Officer made two additions. Firstly, benefit u/s 54F of the Act was denied and capital gains of Rs. 51,71, 994/- was brought to tax. The second addition made by the Assessing Officer of Rs. 19,75,410/- u/s 68 of the Act was deleted by the CIT(Appeals) recording that the said addition was entirely unjustified. The Assessing Officer himself in the remand report accepted the factual position.

2. The assessee, an individual, had sold property No. A-173, Kaushambi, Ghaziabad on 5th October, 2006 for Rs. 45 lacs. Since the stamp duty was paid on circle rates, the assessee had declared capital gains of Rs. 51,71,994/- as per Section 50C(1). The said sale consideration has not been disturbed or objected to by the Assessing Officer.

3. The Assessee had purchased a fully built up property measuring 275 square yards C-7, Anand Vihar, Delhi for Rs. 50 lacs on 21st December, 2004. The assessee was sanctioned loan of Rs. 80,00,000/- from a nationalised bank on 15th December, 2004 by mortgaging this property.

4. The Assessing Officer observed that as per Section 54F the assessee was required to complete construction of a residential house within three years from the date of the sale of the capital asset. The Assessing Officer held that there was neither the need for the assessee to reconstruct nor renovate the purchased property as it was already fully constructed. He referred to the bills produced by the respondent-assessee and has recorded that eight bills pertain to period prior to the date of purchase, i.e., 21st December, 2004. (30th November, 2004 to 19th December, 2004).

5. The Assessing Officer did not disturb or dispute the quantum of money spent on construction as declared by the assessee at Rs. 59,98,451/-. The total amount spent on construction itself, as is noticeable, is substantial and even more than the purchase value as declared. The loan with mortgage was obtained by the respondent-assessee a few days before execution of the sale deed.

6. The CIT(Appeals) permitted the assessee to adduce additional evidence and has referred to the remand reports given by the Assessing Officer. He specifically recorded the difference in the earlier construction as per the plan sanctioned by the DDA on 6th April, 1989 and the new construction. It is evident that the property was initially constructed way back in 1989. The first appellate authority has highlighted the new construction, the area constructed and mentioned the difference between the old and new construction. The appellate authority has referred to the notice issued by the Assistant Engineer (Building), Shahdara (South Zone), Municipal Corporation of Delhi dated 24th August, 2006 mentioning unauthorised construction, deviations from sanctioned building plans and that the construction should be demolished. The first appellate authority relied on certificate issued by the Architect, who had stated that the earlier structure was demolished and thereafter, new construction was made on the plot. After examining the factual matrix, the first appellate authority reached the conclusion that it was a case of new construction after demolition. The said factual finding has been affirmed by the tribunal. The word "construction" in Blacks'' Law Dictionary, 6th Edition at page 312 has been defined to mean to build; erect; put together; make ready for use. The word "construct" is distinguishable from maintenance, which means to keep up, to keep from change, to preserve. The word "construction" for the purpose of Section has to be given realistic, practical and a pragmatic meaning keeping in mind the object and purpose of the provision. Section 57F is a beneficial provision as an earlier capital asset, which is sold, is replaced by a new capital asset in form of a residential house, which should be purchased or constructed within the time period stipulated.

7. We need not examine the contention of the Revenue that cases of renovation or even extension are not covered by the term "construction" in Section 54F of the Act. The said

issue is left open to be decided in an appropriate case. In the case at hand, we find that the factual finding recorded by the first appellate authority and affirmed by the tribunal show that it is a case of "construction" u/s 54F of the Act.

8. Section 54F of the Act requires that construction should be carried out within a period of three years from the date of sale of the capital asset. In the present case, the construction was carried out within the outer limit of three years. On this aspect, there is no dispute. The appeal is accordingly dismissed.