B. Singh Chatrath and Sons. Vs Commissioner of Income Tax

Court: Delhi High Court

Date of Decision: Jan. 4, 2001

Citation: (2001) 116 TAXMAN 387

Hon'ble Judges: Arijit Pasayat, C.J; D.K. Jain, J

Bench: Full Bench

Advocate: R.C. Pande and Ajay Jha for the Revenu, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of the assessed, following question has been referred for opinion of this court by the Tribunal, Delhi Bench "E", Delhi u/s 256(1) of

the Income Tax Act, 1961 (hereinafter referred to as the Act") :-

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that for the purpose of section 2(42A) of the Income

Tax Act, 1961, the assessed held the plot from the date of execution and registration of the deed of sale, i.e., 5-9-1974, and that the capital gain

arising from the sale of of the said plot was a short-term capital gain ?

2. Dispute relates to the assessment year 1975-76. Factual position, as indicated in the statement of the case, is as follows :-

The assessed had purchased plot no. 255, measuring 200 sq. yards. in Block "M", Greater Kailash, New Delhi from DLF for Rs. 8,500. The

requisite document was registered on 5-9-1974. The assessed sold half of the plot as per sale deed dated 31-3-1975. The Income Tax Officer

treated the capital gain on the sale as short-term capital gain as, according to him, the asset was sold within six months of its purchase. The

assessed, however, claimed that it was a long-term capital gain since it had booked the plot much earlier, and even the last Installment of the

purchase price was paid on 12-4-1961. Aggrieved by the assessment order, an appeal was filed by the assessed before the Appellate Assistant

Commissioner. The assessed"s stand was not accepted by the said authority. Matter was carried in further appeal before the Tribunal. It was the

assessed"s stand that in terms of section 2(42A), short-term asset means a capital asset held by the assessed for not more than 60 months

immediately preceding its date of transfer. The term "held by the assessment not only legal ownership but also beneficial ownership. Reliance was

placed on a decision of Chandigarh Bench of the Tribunal in the case of Gurjit Singh 1979 Tax 53(6) 80. The Tribunal noticed the factual aspects

involved in the said case and observed that the factual background was different in the case at hand. It, Therefore, held that the assessed became

owner of the plot only on the registration of the plot in its name on 5-9-1974 and, Therefore, the authorities were justified in treating the question

as short-term capital gain.

3. On being moved, the Tribunal has referred the question, as set out above, for opinion of this court.

4. We have heard the learned counsel for the revenue. There is no appearance on behalf of assessed in spite of notice. The learned counsel for the

revenue submitted that what would be the nature of the transaction and whether the asset in question was actually held by the assessed would

depend upon the agreement between the seller and the purchaser of the property. in the case at hand, the Tribunal, on consideration of the factual

aspects, has held that the ownership vested with the assessed on the registration of the property on 5-9-1974.

5. As has been rightly submitted by the learned counsel for the revenue, it would depend upon the agreement of the parties as to how the

ownership gets transferred. In the case at hand, these factual aspects have not been brought on record and even there seems to be some

controversy as to whether the assessed made any payment in the year 1958, as claimed by it. Both, the assessing officer and the Appellate

Assistant Commissioner, found that no material was produced to show about any payment in the year 1958.

6. Above being the position, we are of the view that no question of law arises out of the order of the Tribunal. We, accordingly, decline to answer

the question.

7. This reference stands disposed of.