courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(1989) 09 BOM CK 0096

Bombay High Court

Case No: Income-tax Reference No. 320 of 1976

Commissioner of Income Tax		APPELLANT
	Vs	
Ismailia Co-operative Housing Society Ltd.		RESPONDENT

Date of Decision: Sept. 6, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 45

Citation: (1990) 81 CTR 119 : (1990) 181 ITR 174 : (1990) 48 TAXMAN 62

Hon'ble Judges: T.D. Sugla, J; S.P. Bharucha, J

Bench: Division Bench

Judgement

S.P. Bharucha, J.
This reference u/s 256(1) of the Income Tax Act, 1961, raises, at the behest of the Revenue, the following question :

"Whether, on the facts and circumstances of the case, the assessee acquired only a right to litigate and did not hold any interest in the leasehold land and hence the compensation amount of Rs. 4,23,044.67 is not liable to capital gains ?"

2. For reasons that will become apparent, we reframe the question thus :

"Whether, on the facts and in the circumstances of the case, the compensation amount of Rs. 4,23,044.67 was liable to tax as a capital gain in the hands of the assessee for the assessment year 1971-72 ?"

3. The relevant previous year ended on June 30, 1970.

4. The assessee is a co-operative housing society. It was established prior to 1944. On October 27, 1944, the assessee applied to the Municipal Corporation of Greater Bombay

for a lease in perpetuity of plot No. 7 of Scheme No. 57 situated at Sewri-Wadala Estate, Bombay. The said plot measured 45,000 sq. yds. The assessee''s offer was accepted on January 11, 1945. The assessee was required to pay to the Municipal Corporation the sum of Rs. 1,27,358, being one-fourth of the premium amount, and a further sum of Rs. 3,82,075 within a period of five years from the date upon which it obtained possession of the said plot. The payments were not made by the assessee. Possession of the said plot was not given to the assessee. No formal agreement was entered into.

5. On February 17, 1954, the assessee received a notice u/s 4 of the Land Acquisition Act, 1894, stating that the said plot was proposed to be acquired for the public purpose of constructing a depot for the BEST undertaking. The assessee objected to the acquisition. It also filed a claim for compensation. An award was made. There being a dispute as to the apportionment of the amount of Rs. 13,94,890.50 awarded, the same was deposited in this court pending the disposal of a reference u/s 30 of the Land Acquisition Act. Consent terms were arrived at in the reference whereunder the assessee received compensation in the said amount of Rs. 4,23,044.67.

6. The Income Tax Officer treated the compensation amount and interest thereon as the assessee''s income. In appeal, the Appellate Assistant Commissioner held that the compensation amount was a capital receipt not subject to tax. In second appeal, it was contended before the Income Tax Appellate Tribunal that the compensation amount attracted tax being a capital gain. The Tribunal found that the assessee had no proprietary interest in the said plot but only a right to sue for a lease thereof. It did not, therefore, hold a capital asset and there was no question of having transferred or relinquished it. The Tribunal also noted that the interest of the assessee in the said plot, if at all it had any, had been taken away before 1956, when there was no tax on capital gains.

7. Dr. Balasubramanian, learned counsel for the Revenue, submitted that the right of the assessee was to get a lease of the said plot. The right had subsisted till February, 1954. Till then a decree could have been passed in favour of the assessee for specific performance. Though the said plot had been lost in February, 1954, the assessee''s right under its contract with the Municipal Corporation, including the right to receive damages, continued until it was concluded by the consent terms arrived at in 1970. The right to get a lease was a capital asset and it got transferred only on the day on which the consent terms were arrived at.

8. We are concerned with seeing whether there was a transfer by the assessee of a capital asset during the year ended 30th June, 1970. Having regard to the consent terms that were entered into, we must proceed upon the basis that the assessee had a right or interest in the said plot. That right or interest ceased when the said plot was acquired and that was long before the commencement of the previous year in question. Thereupon, the assessee obtained the right to get compensation and the amount of the compensation was determined when the consent decree was entered into. Assuming, therefore, that

there was a transfer of a capital asset, it took place long before the previous year in question. Upon this basis alone, it must be held that the Tribunal was right in finding that the compensation amount of Rs. 4,23,044.67 was not liable to capital gains for the assessment year 1971-72.

9. The question, as reframed, is answered in the negative and in favour of the assessee.

10. No order as to costs.