

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 923/CHNY/2020

निर्धारण वर्ष/Assessment Year: 2006 - 07

Smt. Rajamanikam Meerabai,
Door No.29, Old No.T-2-2,
Cauveri Salai
Besant Nagar South,
Chennai – 600 090.

The Income Tax Officer,
vs. Non Corporate Ward -15(3),
Chennai.

PAN: AAOPM 7401M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/Appellant by

: Shri N. Arjun Raj, C.A

प्रत्यर्थीकी ओ रसे/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 10.10.2023

घोषणा की तारीख/Date of Pronouncement

: 18.10.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.180/CIT(A)-15/2016-17 dated 21.09.2020. The assessment was framed by the Income Tax Officer, Non Corporate Ward 15(3), Chennai for the assessment year 2006-07 u/s. 143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 31.03.2016.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in computing long term capital gain and disallowing the claim of exemption u/s.54 of the Act. For this, assessee has raised various grounds which are argumentative and exhaustive and hence, need not be reproduced.

3. Brief facts according to AO are that during the year under consideration i.e., financial year 2005-06 relevant to this assessment year 2006-07, the assessee sold a residential house for a sum of Rs.17.50 lakhs. The AO also noted that the assessee has invested the entire sale consideration for purchase of plot at Tiruvanmiyur and hence, there remains no balance capital gain arising out of the same. But the AO denied the claim of deduction u/s.54 of the Act and computed the capital gain. The assessee before AO raised the first issue that the sale of property took place on 19.07.2007 i.e, falling in financial year 2007-08 relevant to assessment year 2008-09 and not in assessment year 2006-07 as noted by the AO. The CIT(A) also not accepted the claim of assessee and confirmed the addition. The CIT(A) rejected the claim of assessee that the transfer of property took place on 19.07.2007 in financial year 2007-08 relevant to assessment year 2008-09 whereas he confirmed the action of AO by holding that the assessee

during original assessment proceedings in affidavit admitted that as per sale agreement dated 01.06.2006 and affidavit given by assessee dated 02.02.2006, the vacant possession of the property was handed over on 02.02.2006 in the presence of witness. It was noted by the CIT(A) that assessee also executed a General Power of Attorney dated 02.02.2006 in favour of one Smt. P. Thilakavathy wife of Shri D. Parthasarathy. The CIT(A) after noting these facts held that the transfer took place in this assessment year i.e., 2006-07 as under:-

5.4 On perusal of the assessment records, the following facts became clear in the light of material evidence available on records:-

(a) From the assessment records, it is seen that Ms. P. Radhika, purchaser of the Appellant's property at Adyar, filed a letter dated 26.10.2012 before the AO stating that her father Mr D Parthasarathy entered into an agreement with the Appellant to purchase the said property and paid the sale consideration and took possession of the property on 02.02.2006.

Further, as per Affidavit dated 02.02.2006 filed by the Appellant during the course of assessment according to which Sale Agreement between the Appellant and Mr Parthasarathy was entered on 01.02.2006 and as mentioned at page 3 of the Affidavit, the Appellant had handed over the vacant possession of the said property on 02.02.2006 in the presence of witness. She also executed a General Power of Attorney dated 02.02.2006 in favour of Mrs. P.Thilakavathy wife of D. Parthasarathy in this regard.

In the light of the above documentary evidence, the appellant's contention that property was not handed over during FY 2005-06 is incorrect. As the sale consideration has been received and possession of the property was handed over by the appellant to the purchaser during FY 2005-06, the AO has rightly invoked the provisions of Sec.2(47)(v)&(vi) of the I.T. Act and held that the transfer took place in FY 2005-06 and hence the assessee is

liable for Capital Gains Tax for AY 2006-07 only. Hence, the Appellant's ground of appeal in respect of date of transfer is dismissed and the finding of the A.O is upheld.

Aggrieved, assessee came in appeal before the Tribunal.

4. We have heard rival contentions and gone through facts and circumstances of the case. The Id.counsel for the assessee filed paper book consisting of 39 pages and in which sale deed executed for the original property sold by assessee on 19.07.2007 is enclosed. The Id.counsel for the assessee took us through the sale deed recitals and stated that the sale deed is executed on 19.07.2007 and as per the sale deed, the balance final payment of Rs.7.50 lakhs was made on that date i.e., on 19.07.2007 by way of cash. The balance payment of Rs.5 lakhs and Rs. 5 lakhs by way of two drafts was paid at the time of agreement on 11.01.2006. The Id.counsel for the assessee drew our attention to page 6 of the sale deed wherein narration of payments is mentioned, which reads as under:-

“1. Rs.5,00,000/- (Rupees Five Lakhs Only) by way of crossed A/c. payee cheque bearing No.588112 dated 11.01.2006 drawn at Andhra Bank, Saidapet Branch, favouring Dr. Mrs. Meera Bai.

2. Rs.5,00,000/- (Rupees Five Lakhs Only) by way of crossed A/c. payee cheque bearing No.777392 dated 11.01.2006 drawn at The Lakshmi Vilas Bank Ltd, Mount Road Branch, Chennai 600 006 favouring Dr.Mrs.R. Meera Bai.

3. Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) by way of cash at the time of registration.”

The Id.counsel for the assessee also drew our attention to one covenant of the sale deed which is as regards to handing over of possession to the purchaser from the date of sale deed and the relevant covenant reads as under:-

“The VENDOR doth hereby covenant that she is the absolute owner in possession and enjoyment of the said property more particularly described in the Schedule hereunder, that she has full power and authority to convey the same to the PURCHASER and that the property is free from all encumbrance, charges, lien, demand, will, trust, settlement or any litigation and that the said schedule property shall at all times be peacefully entered and quietly enjoyed by the PURCHASER and the VENDOR has not done or knowingly suffered or been a party to or privy to any act, deed or thing by reason whereof the said property or any part thereof is charged or encumbered or affected in estate, title or otherwise and that the VENDOR has paid all the levies and taxes in respect of the 'said property upto date and the VENDOR shall keep the PURCHASER indemnified against all claims, actions, proceedings, demands, costs, damages and expenses whatsoever which the PURCHASER may be put to by reason of any defect in title or any breach of any of the covenant, assurances and representations, contained herein and the VENDOR shall at all times, at the request of the PURCHASER do or cause to be executed and registered all such ACTS, DEEDS and THINGS as may be reasonably required for further and better assuring the title of the PURCHASER to the said Property or any part thereof unto and to the use of the PURCHASER absolutely and forever;

5. On the other hand, the Id. Senior DR relied on one affidavit, he filed copy of affidavit dated 02.02.2006 whereby he referred to sale agreement dated 04.02.2006 whereby he admitted that the vacant

possession of the property was handed over and the relevant, he drew our attention which is on page 2 of the affidavit, as under:-

“I have handed over vacant possession of the property this day in the presence of witnesses.”

6. We noted that as per Agreement to sell dated nil, the assessee will hand over the possession to the purchaser on the date of registration of sale deed and the relevant covenant 8 of the sale deed reads as under:-

“8. The vendor agrees to give vacant possession of the aforesaid property at the time of registration of the Sale Deed or Sale deeds.”

It means that by way of registered sale deed, the assessee has received balance sale consideration of Rs.7.50 lakhs out of sale consideration of Rs.17.50 lakhs on the date of registration of sale deed i.e., 19.07.2007. Even the sale deed mentions the handing over of possession on the date of registration of sale deed which is supported by the agreement to sell. Only affidavit of the assessee supports the arguments of Revenue. But the legal position settled by the Hon'ble Supreme Court in the case of Seshasayee Steels (P) Ltd., vs. ACIT, [2020] 115 taxmann.com 5 (SC) following the decision of Hon'ble Supreme Court in the case of CIT vs. Balbir Singh Maini, [2018] 12 SCC 354 held that the transfer will complete in regard to property rights whenever owners rights have been

extinguished. In the present case before us, the rights get extinguished on 19.07.2007 and not on the date of Agreement to sale i.e., 04.02.2006. The Hon'ble Supreme Court in the case of Seshasayee Steels (P) Ltd., *supra*, has considered this issue as under:-

“We now turn to the argument of the learned senior counsel appearing on behalf of the assessee based on Section 2(47)(vi) of the Income Tax Act.

This Court in Commissioner of Income Tax v. Balbir Singh Maini (2018) 12 SCC 354 adverted to the provisions of this sub-Section in the following terms:

24. However, the High Court has held that Section 2(47)(vi) will not apply for the reason that there was no change in membership of the society, as contemplated. We are afraid that we cannot agree with the High Court on this score. Under Section 2(47)(vi), any transaction which has the effect of transferring or enabling the enjoyment of any immovable property would come within its purview. The High Court has not adverted to the expression “or in any other manner whatsoever” in sub-clause (vi), which would show that it is not necessary that the transaction refers to the membership of a cooperative society. We have, therefore, to see whether the impugned transaction can fall within this provision.

25. The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression “enabling the enjoyment of” takes color from the earlier expression “transferring”, so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof. The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.

Given the test stated in paragraph 25 of the aforesaid judgment, it is clear that the expression “enabling the enjoyment of” must take colour from the earlier expression “transferring”, so that it can be stated on the facts of a case, that a de facto transfer of immovable property has, in fact, taken place making it clear that the de facto owner’s rights stand extinguished. It is clear that as on the date of the agreement to sell, the owner’s rights were

completely intact both as to ownership and to possession even de facto, so that this Section equally, cannot be said to be attracted.”

As the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Seshasayee Steels (P) Ltd., *supra*, and the fact in the present case is that the owner's right to property get extinguished on the date of registration of sale deed i.e., 19.07.2007 and the assessment of capital gain can only be made in assessment year 2008-09 and not in this assessment year 2006-07. Hence, the other arguments and claim of deduction has become infructuous and academic. We quash the assessment on this sole issue. This issue of assessee's appeal is allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 18th October, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 18th October, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.