

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 350/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

Bharat Kumar Ramani, Hyderabad [PAN No. AALPR2648J] vs. Income Tax Officer, Ward-5(3), Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by: Shri A. Harish &
Shri G. Kalyandas, ARs

राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 17/10/2023
घोषणा की तारीख/Pronouncement on: 31/10/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 30/05/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Bharat Kumar Ramani ("the assessee") for the assessment year 2016-17, assessee preferred this appeal.

2. Brief facts of the case are that the assessee along with his mother and six brothers and sisters succeeded to the property, originally purchased by his father late Shri Mohan Lal Ramani vide Registered Sale Deed dated 14/12/1965, on the demise of his father on 22/03/1995. Subsequently, a suit for Partition was filed vide O.S. No. 2829/2010 on the file of the First Additional Senior Civil Judge, City Civil Court Hyderabad. During the pendency of the suit, on demise of assessee's mother on 28/08/2011, under the will of mother, the assessee became the owner of her 1/8th share of the property also. Subsequently, a compromise decree was arrived and the civil court directed the assessee to pay Rs. 102.50 lakhs to six co-owners and court executed the partition deed among family members vide Regd. Document No. 2543/2015, dated 21/04/2015 thereby assessee also became the owner of the 6/8th share of the property. Assessee sold the entire property under Regd. Sale Deeds Document Nos. 257 & 258/2016 both dated 21/01/2016 for Rs. 160.00 lakhs.

3. Assessee pleaded before the learned Assessing Officer that the property was succeeded and partition among family members does not constitute transfer within the meaning of Section 45 of the Act. Learned Assessing Officer, however, treated the partition deed dated 21/01/2016 as the purchase deed for assessing 6/8th share as short term capital gains and allowed part of the expenditure claimed Rs. 1,25,70,860/- in respect of transfer for the purpose of capital gains which is not disputed. Further the learned Assessing Officer while assessing the long term capital gains of 2/8th share, disbelieved the value of the property determined by the Regd. valuer as on 01/04/1981.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the learned CIT(A). Learned CIT(A) by way of impugned order, upheld the action of learned Assessing Officer in treating the capital gains arising in respect of the 6/8th share in respect of which the assessee paid Rs. 102.50 lakhs to the co-sharers as short term capital gains on the premise that the assessee acquired the share of others under the compromise deed. Learned CIT(A), however, determined market value of the property as pleaded by the assessee and on that aspect, assessee has no dispute.

5. Aggrieved by the findings of the learned CIT(A) in respect of the treatment of the capital gains relatable to the 6/8th shares as short term capital gains, assessee preferred this appeal. The sole issue in this appeal, as argued by the learned counsel, therefore, is whether there is any transfer of property from the other co-sharers to the assessee in respect of such 6/8th share on the assessee paying Rs. 102.50 lakhs within the meaning of Section 45 / 47(i) of the Act?

6. Learned AR, in support of his contention that partition among family members does not constitute transfer, placed reliance on the decisions in the cases of CIT Vs. Keshavlal Lalubhai Patel 55 ITR 637 (SC), CIT Vs. M. K Stremann 56 ITR 62 (SC), Commissioner of Gift Tax, Madras V s. N. S. Getti Chettiyar 82 ITR 599 (SC), Smt. Cherukuri Eswaramma Vs. Controller of Estate Duty 69 ITR 109 (AP) and Smt. Cherukuri Eswaramma Vs. Controller of Estate Duty reported in 70 ITR 812 (AP).

7. Per contra, it is the contention of the learned DR that there is no dispute as to the principle that partition of family properties does not

tantamount to transfer under the Act, but in the case on hand, what the Revenue disputed is not that principle, but the acquisition of the share of other co-parceners by the assessee by paying consideration is treated as 'transfer', because such acquisition is not by devolvement from the father, but it is from the other co-parceners. Learned DR, therefore, submits that insofar as the devolvement of 2/8th share from the parents is concerned, the Revenue agrees the contention of the assessee that transfer of such share gives rise to long term capital gains, but such part which he acquired from the other co-sharers under the compromise deed and sold within less than a year, gives rise to short term capital gains only.

8. We have gone through the record in the light of the submissions made on either side. It seems the learned Assessing Officer and learned CIT(A) are under the impression that on declaration of the respective shares, namely, 2/8th to the assessee and 6/8th to the coparceners, the process of partition reached its logical end and, therefore, the compromise decree resulted in the assessee acquiring the shares of others. However, this understanding is incorrect. With the passing of the preliminary decree and for that matter, with the passing of any final decree, the partition does not reach its logical conclusion. It is only with the allottees of the shares putting in possession of the respective property, the partition is complete. Till then, the shares themselves are liable to be varied on account of the intervening events, if any. Whatever the directions that the civil court gives and whatever the payment that would be made by the parties to each other or the variances in the size of shares by metes and bounds, till the partition proceedings reach the logical conclusion, are only the process of adjusting the equities.

9. We are fortified in our view by the decision of the Hon'ble Apex Court in the case of S. Sai Reddy Vs S Narayana Reddy (1991) 3 SCC 647, wherein the Hon'ble Apex Court held that,-

“When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events.”

10. A perusal of the compromise decree dated 21/04/2015 clearly shows that it is not a record of mere payment transaction in respect of 6/8th share of other coparceners, but it deals with other items of property and the obligations of other parties also. More particularly it deals with the other movable and immovable property and also and rights and obligations of other defendants also. It deals with the rights and obligations of the parties. On a careful perusal of the same, we have no doubt in our mind that it is the record of adjustment of equities and not a document recording the simple payment and acquisition of the rights of the 6/8th shareholders in one item of the property. It is only the compromise decree that gives a quietus to the issue of partition and, therefore, the assessee must be deemed to have acquired the property under such decree on devolution of the same from the father, but not through the other coparceners. Such an event gives rise to the legal fiction that when the assessee alienated the property on 21/01/2016, the assessee did so while in the shoes of the other coparceners, for the purposes of computing the capital gains.

11. With this view of the matter, we hold that the assessee is entitled to offer the entire capital gains as long term capital gains, and consequently direct the learned Assessing Officer to treat the entire impugned capital gains as long term capital gains. Grounds are answered accordingly.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 31st day of October, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 31/10/2023

TNMM

Copy forwarded to:

1. Bharat Kumar Ramani, Villa No. 79, Magadha Village Society, Kokapet,
Ranga Reddy Dist.,
2. The Income Tax Officer, Ward-5(3), Hyderabad.
3. The Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD