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T.C.(A)No.207 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

T.C.(A)No.207 of 2013

Smt.A.Rita

.... Appellant

vs

The Commissioner of Income Tax
Puducherry.

.... Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against order dated 30.01.2013 made in I.T.A.No.904/Mds/2012 on the file of the Income Tax Appellate Tribunal, 'D' Bench, in respect of assessment year 2008-09.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.S.Rajesh
Junior Standing Counsel
for Mr.J.Narayanasamy
Senior Standing Counsel



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JUDGMENT

(Delivered by Dr. ANITA SUMANTH..J)

The relevant sequence of dates and events are as follows:

(i) The appellant/assessee purchased a property at S.No.93/5, Valudhareddy Village, Villupuram Taluk ad measuring 1.18 acres by way of a deed dated 22.01.1980 registered on the file of the Sub-Registrar, Villupuram (schedule property) from Shanmugam, Arumugam and Murugan (in short 'vendors').

(ii) That property formed part of a basket of assets that was under litigation inter se the family of the vendors.

(iii) A partition suit came to be filed in O.S.No.288 of 1981 by the sisters of the vendors, viz., Saraswathi and Lakshmi, which came to be decreed in favour of the sisters partly.

(iv) Assailing the decree in the Suit, the sisters of the vendors filed a first appeal before Sub-Court, Villupuram in A.S.No.135 of 1983, which confirmed the order of the Civil Court in regard to items 1 to 37 of the suit properties, which includes the schedule property at serial number 36 thereof.



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(v) A second appeal in S.A.No.458 of 1985 came to be filed by the vendors and Cross objections were filed by the sisters.

(vi) The second appeal was disposed on 09.04.1986, a learned Judge of this Court confirming that the conclusion of the Civil Court was correct qua properties at 1 to 37.

(vii) Hence, and with the passing of the order in second appeal, the title to the schedule property was held to vest in the sisters.

(viii) An Execution Petition was filed by the sisters seeking to execute the decree.

(ix) Pending the proceedings for execution, the parties, that is, the appellant herein and the sisters, effected a compromise of the lis, and entered into Deed of compromise dated 07.10.2005 to following effect:

உடன்படிக்கை பத்திரம்

2005 ஆம் ஆண்டு அக்டோபர் 7ஆம் தேதி விழுப்புரம் டவுன் சந்தானகோபாலபுரம் மெயின் ரோடு 34 இலக்கத்தில் வசிக்கும் அந்தோனிசாமி மனைவி ரீத்தா அம்மாள் (1), விழுப்புரம் தாலுக்கா சாலமேடு கிராமத்தில் வசிக்கும் ராமகிருஷ்ணன் மனைவி சரஸ்வதி (2), மேற்படி விழுப்புரம் தாலுக்கா சாலமேடு கிராமத்தில் வசிக்கும் அசோக கவுண்டர் மனைவி லக்ஷ்மி (3) ஆகிய நாம் மூவரும் எழுதிக்கொண்ட ஒப்பந்தம் என்னவெனில்

நம்மில் 2, 3 நபர்கள் விழுப்புரம் மாவட்ட உரிமையியல் நீதிமன்றத்தில் வழதரெட்டி கிராமம் புஞ்சை 93/5 நிலம் குறித்து தாக்கல் செய்யப்பட்ட E.P.236/97



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நிறைவேற்று மனுவினை பொறுத்து, நம்மில் முதல் நபர் மேற்படி சொத்து அவருக்கு தனிப்பட்ட பாத்யமான சொத்து என்று கட்சி ஆடி மேற்படி E.P.236/97 தள்ளுபடி செய்யப்பட வேண்டுமென்று நம்மில் முதல் நபர் E.A.2403/1997 என்ற மனுவினை தாக்கல் செய்து மேற்படி மனு நிலுவையில் இருந்து வருகின்ற சூழ்நிலையில், உபய பார்ட்டிகள் கட்சி எப்படியிருந்த போதிலும் இந்த வழக்கினை விரைவில் ஒரு முடிவுக்கு கொண்டு வரவேண்டுமென்று எண்ணத்தினால், நாம் அனைவரும் ராஜியாகி, அதன்படி நம்மில் 1 வது நபர் தாக்கல் செய்த உரிமையியல் சட்டம் ஆர்டர் 21 விதி 97 E.A.2403/1997 என்ற மனுவினை அனுமதிக்க 23 நபர்கள் ஒப்புக்கொண்டுள்ளனர். அதற்கு பிரதிபலனாக நம்மில் 1 ஆம் நபர் மேற்படி புல எண் 93/5 70 செண்ட் சொத்தினை கிரையம் செய்து அதன் மூலம் கிடைக்கும் கிரைய தொகையில் பாதி தொகையினை நம்மில் 1ஆம் நபரும் மீதி தொகையினை நம்மில் 2, 3 நபர்களும், சரி சமமாக எடுத்துக்கொள்வதாக நாம் அனைவரும் ஒப்புக்கொண்டுள்ளோம். மேலும் 2, 3 நபர்களுக்கு உரிய பாதி கிரைய தொகையினை கிரையதாரரிடமிருந்தே 2, 3 நபர்கள் நேரடியாக பெற்றுக்கொள்வதில் 1ஆம் நபருக்கு எவ்வித ஆட்சேபணையும் இல்லை. அவ்வாறு அவர்கள் பெற்றுக்கொள்ளும் கிரைய தொகைக்கு உரிய வருமானவரியினை 2, 3 நபர்களே செலுத்தி கொள்ளவேண்டியது. மேலும் கடலூர் வீட்டு வசதி வாரியத்தால் ஆர்ஜிதம் செய்யப்பட்டதும் O.S.288/81ல் சம்மந்தப்பட்ட 9, 10, 11, 13, 16 அயிட்ட சொத்துக்கள் பொறுத்தும் நமக்குள் நாம் ராஜியாகியுள்ளபடியால் அதன் ஒட்டுமொத்த பைசலுக்காக நம்மில் 1ஆம் நபர் நம்மில் 2, 3 நபர்களுக்கு ஒட்டுமொத்தமாக ரூ.5,00,000/- (ஐந்து லட்சம் மட்டில்) தருவதாகவும் 1ஆம் நபர் ஒத்துக்கொள்கிறார், அதன்படி 2, 3 நபர்கள் மேற்படி சொத்துக்கள் குறித்த நிறைவேற்று மனு தாக்கல் செய்வதில்லை என்று உறுதி கூறுவதுடன் அது குறித்து 1ஆம் நபர் உரிய மனு (அ) வழக்கு தாக்கல் செய்யும் பட்சத்தில் மேற்படி மனு (அ) வழக்கினை அனுமதிக்க 2, 3 நபர்கள் சம்மதமும் தெரிவிக்கிறார்கள். இது சம்மந்தமாக 2, 3 நபர்கள்



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சென்னை உயர்நீதிமன்றத்தில் தாக்கல் செய்துள்ள
நீதி பேராணை W.P.No.40423/2002 வழக்கினையும்
வாபஸ் பெற்றுக்கொள்கின்றனர்.

இந்தபடிக்கு நாம் மூவரும் சம்மதித்து
எழுதிக்கொண்ட உடன்படிக்கை பத்திரம்.

(x) An application thus came to be filed by the Appellant in E.A.No.2403 of 1997 under Order 21 Rule 97 of the Civil Procedure Code praying to dismiss E.P.No.236 of 1997.

(xi) In the course of the Execution proceedings, the Principal District Munsif, Villupuram passed an order dated 19.10.2005 recording the memo filed by Rita, Saraswathi and Lakshmi to the effect that they had no objection to E.A.No.2403 of 1997 being allowed. The litigation inter se the parties thus came to an end by virtue of the aforesaid order only.

(xii) The Appellant filed a return of income for assessment year (AY) 2008-09 on 29.07.2008 returning capital gains computed on the basis that the amount paid by her to the sisters be taken into account in determining the computation of cost of acquisition of the subject property.

(xiii) An assessment came to be made on 31.10.2010 and in completing the assessment, the Assessing Authority took the view that the



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amounts paid as compensation did not constitute expenditure that could be allowed in the computation of capital gains.

(xiv) Before the Commissioner of Income Tax (Appeals) in first appeal, the appellant reiterated its case that the compensation constituted part of the cost of acquisition. All relevant documents such as the deed of purchase dated 22.01.1980, order of the Civil Court dated 23.01.1985 in O.S.No.288 of 1981, order in First Appeal dated 23.01.1985 in A.S.No.235 of 1983, the order of the High Court in Second Appeal dated 09.04.1996 in S.A.No.458 of 1985, order passed by the Principal District Munsif on 19.10.2005 in the interim application filed by the appellant, compromise memo dated 07.10.2005, Agreement of sale between the appellant and the three sisters dated 07.10.2005 and the order of the Principal District Munsif dated 06.08.2008 closing the application based on the memo were placed before the CIT(A), who on consideration of the same, accepted the assessee's contention.

(xv) The above order was reversed on 30.01.2013 by the Income Tax Appellate Tribunal ('ITAT'/'Tribunal') at the instance of the revenue. The Tribunal took the view that the compensation paid would, at best, only



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amount to application of the amount and not cost of acquisition under Section 48 of the Act. Hence this appeal.

2. We have heard the submissions advanced by Mr.A.S.Sriraman, learned counsel for the appellant and Mr.Rajesh, learned Junior Standing Counsel for the respondent.

3. The docket sheet does not reveal that the matter has been admitted thus far. Hence, on a consideration of the substantial questions of law raised for decision, the following question of law is admitted and the matter taken up for final hearing with the consent of both learned counsel:

Whether the Appellate Tribunal is correct in law in sustaining the action of the respondent in rejecting the claim for exclusion of Rs.33,87,720/- out of the sale proceeds from the sale of the property/capital asset in the computation of Long Term Capital Gains overlooking the applicability of the legal theory of 'Diversion by overriding title' as well as the decision of this Hon'ble Court reported in 261 ITR 222?'

4. The facts are not in dispute and the narration set out in paragraph 1 and the sub-paragraphs thereunder are admitted by both learned counsel. The legal question to be decided relates to the allowability or otherwise of the amount of Rs.33,87,720/- as cost of acquisition in the computation of capital gains under Section 48 of the Act.



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5. Section 48 is extracted below:

48. Mode of computation.

The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto:

6. The question that arises in the present case is as to whether the amount of Rs.33 lakhs (approx.) would constitute expenditure wholly and exclusively incurred in connection with the transfer of the asset.

7. The facts as we have noticed above are to the effect that the purchase of the subject property by the appellant was on 22.01.1980. The vendors of the property were engaged in litigation with their sisters in regard to the title to various properties including the subject property.

8. Their claim was negated by the Civil court which held that the subject property would vest in the sisters of the vendors. Hence, the title of the appellant to the subject property under deed dated 22.01.1980 was under a cloud. The Civil suit instituted qua the vendors and their sisters and other family members was in 1981, subsequent to the deed of purchase executed on 22.01.1980.



9. By virtue of order of this Court in second appeal dated 09.04.1996 in S.A.No.458 of 1985, the sisters have been held to be the owners of the schedule property. The vendors of the Appellant thus held no title whatsoever to the property and it is only upon payment of a sum of Rs.33 lakhs (approx.) that the appellant has cleared his title and can be said to have acquired the property.

10. This is made amply clear by virtue of the recitals in the Agreement of Sale dated 07.10.2005 between the appellant and the three sisters, the whole of which is extracted below:

This Agreement is made on the 7th October of 2005 between Reetha Ammal W/o Anthony Samy and residing at No.34, Santhana Gopalapuram Main Road, Villupuram (1) Saraswathi W/o Ramakrishnan and residing at Salamedu, Villupuram Taluk (2) Lakshmi W/o Ashoka Gounder and residing at Salamedu, Villupuram Taluk (3)

Whereas No.2 & 3 of us had filed E.P. 236/1997 in respect of dry land comprised in S.No.93/5 on the file of District Munsif Court, Villupuram and

Whereas No.1 of us had filed E.A.2403/1997 to dismiss E.P.236/1997 on the ground that it is her separate property and that the said application is pending enquiry and

Whereas the parties have decided to amicably settle the dispute at the earliest and arrived at the compromise and

Whereas Nos.2 & 3 of us have agreed for the application E.A.2403/1997 filed under order 21 Rule 97 C.P.C. being allowed in favour of No.1 of us and



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Whereas the parties have agreed that in consideration of the same No.1 of us had agreed that when an extent of 70 cents in S.No.93/5 was sold, the total sale consideration would be divided in equal moieties between Nos.2 & 3 on the one part and No.1 of us on other part and

That No.1 of us have also no objection for the said amount shall be received directly from the purchaser by Nos.2 & 3 of us and

That the Income Tax payable on the said sale price received by Nos.2 & 3 of us shall be paid by Nos.2 & 3 of us and

That No.1 of us had agreed to pay a sum of Rs.5,00,000/- to Nos.2 & 3 of us in full discharge of the compromise arrived at in respect of items 9, 10, 11, 13 & 16 of the suit properties comprised in O.S.288/81 which had been acquired by the Cuddalore Housing Board and

That Nos.2 & 3 of us assure that they would not file any execution of application in respect of those items and further agree that they would have no objection for the petition as and when filed by No.1 of us in that respect being allowed, and that Nos.2 & 3 of us agreed to withdraw the writ petition No.40423/2002 pending on the file of the Hon'ble High Court of the Judicature at Madras.

The parties have thus agreed and executed this agreement.

Witness:

N.Ramakrishnan

S.Ashokan

A.Raphel

Signed by

1.A.Reetha

2.Saraswathi

3.Lakshmi

11. We are thus of the view that the aforesaid payment has been 'wholly and exclusively' incurred in connection with the transfer of the subject asset.



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12. The Division Bench of this Court in *Commissioner of Income Tax V. Bradford Trading Co. (P) Ltd.* (261 ITR 222) was concerned with the allowability of an amount paid to get over difficulties in the sale of the property. The Bench holds that unless such amount was paid, the transfer of property could not have taken place and hence such payment has an intimate connection to the transfer of the asset. Payment of the amount to end the litigation in respect of the property concerned was purely in the interests of the assessee.

13. In our considered view, the position of the present appellant is far better, as the title to the subject property vested only in the sisters and hence the amount of Rs.33 lakhs is, in a way, part of the sale consideration itself. The amount has been paid not merely to get over difficulties in the transfer, but to enable the transfer itself. This is amply clear from a reading of Agreement of Sale dated 07.10.2005.

14. In light of the above discussion, the substantial question of law is answered in favour of the assessee and against the revenue. This Tax Case (Appeal) is allowed. No costs.

[A.S.M., J] [G.A.M., J]



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Speaking order

To

The Commissioner of Income Tax
Puducherry.



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and
G.ARUL MURUGAN,J.

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