

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

I.T.T.A.NO.428 OF 2018

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal is preferred, under Section 260-A of the Income Tax Act, 1961 ("the Act" for brevity), against the order passed by the Income Tax Appellate Tribunal, Hyderabad ("the ITAT" for short) in I.T.A.No.923/Hyd/2016 dated 11.05.2018. The assessee is in appeal against the said order.

For the assessment year 2008-09, the assessee sold a piece of land admeasuring 954 square yards, out of a total extent of 2420 square yards, for a consideration of Rs.25,20,000/-, and claimed long-term capital loss of Rs.22,02,277/- on the said transaction. The assessee had adopted the cost of acquisition of 2420 square yards as Rs.31,68,080/- by revaluation, contending that the cost of the land, as per the balance sheet as on 31.03.1997, was only Rs.1,08,467/-.

The subject land was allotted by the Andhra Pradesh Industrial Infrastructure Corporation ("the APIIC" for short), in an industrial area for industrial purposes, to M/s. Veena Industries- a proprietary concern of Smt. C.Rajkumari; possession of the land was delivered to her by APIIC on 28.11.1973; and, after running the business as a proprietary concern in the said premises for some time, the concern was converted into a partnership firm, on 01.04.1986, consisting of four partners.

It is the assessee's case that M/s. Veena Industries, which was allotted land on 20.11.1973, was enjoying it as an absolute owner from that day onwards; the partnership firm had merely

succeeded to the business; and the business was taken over by the partnership firm in the year 1986. This contention was not accepted by the assessing officer who, in the assessment order, observed that the land was not allotted to the firm but to Smt. C.Rajkumari in her capacity as a proprietrix; the date on which possession of the subject land was handed over to Smt. C.Rajkumari could not be considered as the date of delivery of possession of the subject land to the assessee firm; on conversion of the proprietary concern to a partnership firm, the land had become an asset of the firm, and that could be said to be the date on which possession of the land was delivered to the firm; since the firm was formed with effect from 01.04.1986, this could be the date of transfer of the land; and the cost of the property, recorded in the balance sheet of the assessee, as on 01.04.1986 should be taken as the cost of acquisition in the hands of the assessee firm. The assessing officer re-determined the long term capital gains as Rs.23,61,816/-.

Aggrieved thereby, the appellant herein carried the matter in appeal to the Commissioner of Income Tax (Appeals) who held that the proprietary concern and the partnership concern were two different entities; the land was originally allotted by the APIIC to M/s. Veena Industries, a proprietary concern of Smt. C.Rajkumari; possession was delivered to her on 28.11.1973; the business was carried on in the said premises; after more than ten years, Smt. C.Rajkumari wanted to convert the proprietary concern into a partnership firm, by introducing three more partners, as on 01.04.1986; thus, the land could be said to have been freshly purchased by four persons, all being partners of the firm, which

had come into operation by virtue of the partnership deed dated 17.04.1986; and they purchased the land vide sale deed dated 07.08.1990. The Commissioner of Income Tax (Appeals) held that the registered sale deed clearly showed that APIIC had given the land to these four persons who had formed a partnership firm; the firm had made an application for allotment of the plot, and the APIIC had entered into an agreement with the firm; the sale deed clearly indicated that the land was purchased by the partners, on behalf of the firm, in 1990; it could not be said that the asset had passed from Smt. C.Rajkumari to the firm; the assessing officer had, in fact, adopted the value, as on 07.08.1990, for computing the cost of acquisition taking the actual date of purchase as 07.08.1990; this resulted in under-assessment of capital gains; and on adoption of the value, as on 07.08.1990, the capital gains may increase.

The appellant firm was, accordingly, issued a notice asking them to show cause why capital gains computation should not result in an enhancement. After receipt of the appellant's reply thereto, the Commissioner of Income Tax (Appeals) referred to clause 7 of the sale deed, and held that the property was purchased by four partners on 07.08.1990; the said sale was, in fact, preceded by an agreement of sale dated 03.07.1990; the assessee had sold 952 square yards, from out of the said land, by virtue of the sale deed dated 15.06.2006 wherein it was stated that the total land of 2420 square yards was purchased by M/s. Veena Industries represented by its partners vide sale document No.3235/1990 which supported the fact that the land was purchased by the partners on behalf of the firm; and there was no

indication therein to prove that the said asset was handed over by the proprietrix of the firm by acquiring the same in the year 1973, enabling the firm to succeed to the property. The Commissioner of Income Tax (Appeals) held that the land could be said to have been purchased only on 07.08.1990. The Assessing Officer was directed to compute the capital gains by working out the cost of indexation adopting the cost as on 07.08.1990.

Aggrieved thereby, the assessee carried the matter in appeal to the ITAT which, by the order impugned herein, proceeded on the premise that the partnership firm had succeeded to the property from the proprietrix. The Tribunal held that the sale deed categorically mentioned that the APIIC was the owner of the land; the sale deed prescribed Rs.15,000/- as the sale consideration towards the cost of the land, including development charges; since this land could not be utilised for any other purposes, other than for industrial purposes, the land could not be transferred/passed on from the previous possessor to the partnership firm, and there was a need for the assessee firm to purchase the land free from all encumbrances from the APIIC; in other words, the land could only be engaged in the activity of manufacture or intended to carry on the old business; the vacant land could not be said to be the land owned by the previous owner; in order to appreciate as to whether the APIIC had a right to withhold the property from a manufacturer, whenever there was a change in the constitution of the members manning the business, one had to refer to the rules prescribed thereunder; the assessee had not placed any document, other than the sale deed which merely indicated that, though vacant possession was delivered to M/s. Veena Industries (earlier

owned by its proprietrix) on 20.11.1973, M/s. Veena Industries had to purchase the property, by reconstituting itself into a partnership firm, for a sum of Rs.15,000/-; therefore, the order of the Commissioner of Income Tax (Appeals) did not necessitate interference; the cost of the land, as on 07.08.1990, should be taken into consideration; and the contention of the assessee, regarding the fair market value as on 01.04.1981, should not be considered.

Sri K.Vasant Kumar, learned counsel appearing on behalf of the appellant, would draw our attention to Section 55(2)(b)(ii) of the Income Tax Act in support of his submission that, since the land was allotted to the proprietrix of M/s. Veena Industries on 28.11.1973, the cost of the land was required to be taken, at its value as on 01.04.1981, to compute capital gains. Section 55(2)(b) of the Act, as it then stood, stipulated that, for the purposes of Sections 48 and 49, the cost of acquisition in relation to a capital asset, where the capital asset became the property of the assessee by any of the modes specified in Section 49(1) and the capital asset became the property of the previous owner before 01.04.1981, means the cost of the capital asset to the previous owner or the fair market value of the asset on the first day of April, 1981 at the option of the assessee.

Learned counsel would also draw our attention to Section 49(1)(iii)(a) of the Act which stipulates that, where the capital asset became the property of the assessee by succession, inheritance or devolution, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets

incurred or borne by the previous owner or the assessee, as the case may be.

The ITAT has proceeded on the premise that the partnership firm had succeeded to the property from the proprietrix, on its constitution with effect from 01.04.1986. While the ITAT has held that the partnership firm succeeded to the property of the proprietrix, the partnership firm was only entitled to such rights over the subject property as was conferred on the proprietrix by the APIIC. Allotment of the subject land, by the APIIC to the proprietrix, was only to enable her to establish an industrial unit in the said industrial plot. It is only if title over the subject property had been passed on by the APIIC to the proprietrix in 1973, when the subject land was allotted in her favour and possession was delivered to her, can the partnership firm claim that it had become the owner of the property by succession. Therefore the only question which we are required to examine in this appeal is whether the asset was acquired by the partnership firm by succession from the proprietrix i.e., whether they became owners of the property by succession. It is only if ownership of the subject property which, admittedly belonged to the APIIC/Government of A.P, was transferred by them to the proprietrix, could the partnership firm claim ownership of the subject property by succession.

There does not appear to be any dispute that the subject land was allotted to the proprietrix by the APIIC, and possession of the land was delivered to her on 28.11.1973. The contents of the original allotment letter, whereby the land was allotted to the proprietrix, was not placed before any of the authorities including

the ITAT, nor was it placed even before us. What was relied upon was the sale deed alone and it is, therefore, necessary to take note of the contents of the sale deed in deciding whether or not the appellant is justified in their contention that the cost of acquisition should be determined as on 01.04.1981. The sale deed, whereby the subject land was alienated in favour of the partners of the partnership firm, is dated 07.08.1990 itself, and refers to an agreement of sale having been entered into between the APIIC and the partners of the partnership firm on 03.07.1990. Clause (3) of the sale deed dated 07.08.1990 also records that the APIIC/Government of Andhra Pradesh had allotted, to the partners of the firm, the scheduled plot of land for setting up an industry for manufacture of assembling of ceiling fans on job work. While land was allotted by the APIIC to the proprietrix in the year 1973, and an agreement of sale was entered into with the partners of the partnership firm on 03.07.1990, neither of these documents were placed before any of the Income-tax authorities, nor have they been placed before us, by the appellant herein.

The sole basis, for the appellant's claim that 01.04.1981 should be taken as the date for determining the cost of acquisition of the land, is that the proprietrix had paid a part of the consideration which was acknowledged in the sale deed, and she was put in possession of the subject land which was delivered to her pursuant thereto. It was incumbent on the assessee to produce a copy of the original allotment letter issued by the APIIC in the year 1973, and the agreement of sale dated 03.07.1990, to establish their claim that the APIIC had not merely allotted the

land, but had sold the land to the original proprietrix and had delivered possession to her pursuant to such a sale.

In the absence of either of these documents being produced before the Income-tax authorities concerned, and in as much as the sale deed specifically stipulates that the property was sold by virtue of the sale deed dated 07.08.1990, the Tribunal cannot be said to have erred in affirming the order passed by the Commissioner of Income Tax (Appeals), fixing the date of acquisition as 07.08.1990 i.e. when the sale deed was executed by the APIIC in favour of the appellant herein. It is only if a substantial question of law arises for consideration, from the order passed by the ITAT, would this Court be justified in exercising its jurisdiction, under Section 260-A of the Act, to entertain this appeal. We are satisfied that no such substantial question of law arises for consideration in the present proceedings.

The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

10th September 2018
RRB