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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.02.2018

+ ITA 246/2018 & CM APPL. 7363-7364/2018

RAJESH GUPTA HUF

..... Appellant

Through: Mr. Rajesh Mahna with
Mr. Krishan Narang, Mr. Manu Giri, Mr. Rohit
Sharma & Mr. Vikram Kakkar, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-11 & ANR.

..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.

1. This appeal by the assessee - a Hindu Undivided Family (HUF), questions an order of the Income Tax Appellate Tribunal (ITAT) which allowed the revenue's appeal.

2. The facts of the case are that the assessing officer (AO) added ₹40,40,000/- under Section 50C of the Income-tax Act, 1961 [hereafter 'the Act' for short]. The assessee had for the relevant assessment year (AY) filed its return declaring an income of ₹9,35,010/- including long term capital gain of ₹7,57,435/-. Later, a notice under Section 148 of the Act was issued

to the assessee on 21.03.2016. During assessment proceedings, the assessee was asked to explain as to why Section 50C of the Act be not invoked with respect to the consideration received on sale of agricultural land as assessed by the authorities for the purpose of stamp duty. The assessee sold its rights in the agricultural land measuring 0.64 hectares in Village-Tulera, Tehsil & Distt. Alwar, Rajasthan on 31.03.2009 for ₹30 lakhs. According to the AO, the value of land for the purpose of stamp duty was ₹70,40,000/-. The assessee claimed possession and occupation of the lands only as a tiller/Kashtkar and not as an owner. It argued that Section 50C was inapplicable; it contended that the owner of the lands was the State of Rajasthan. The AO rejected the explanation holding that the sale consideration was received by the assessee, and not the State of Rajasthan. It further observed that the assessee had failed to prove that the State of Rajasthan was the owner of the land. The CIT(A), held that the addition of ₹40,40,000/-, on account of difference in LTCG was not justified. It was held that Section 50C did not extend to rights in the property and since the assessee was not the absolute owner of the property transferred, the said Section has no application.

3. The Revenue, in its appeal to ITAT challenged the deletion of ₹40,40,000/-. The ITAT, in its impugned order, held as follows:

“8. There is a difference between a lease where the period is specified for e.g. 40 years, 60 years etc. and a perpetual lease where no period is specified. In the first case, rights over the property for a certain period are transferred and the property goes back to the owner after the expiry of the lease term. However, in the latter case, the property is perpetually with the

lessee and does not go back to the owner. The lessee in a perpetual lease is virtually the owner of the property.

9. The CIT(A) in the impugned order failed to appreciate that the lease deed was a perpetual lease deed. It is relevant to refer to the submission made by the assessee before the CIT (A) on 29.05.2017 wherein it was stated as under:

"Agricultural land in Rajasthan is owned by the Government and is under the cultivation of different subjects of the State. Subjects occupy the land as tillers, cultivators, Kashtkars, Dakhaikars, Khatedars and Kabzadars. Occupants are the perpetual lessees. Subjects sell their limited rights in the land and the ownership always remains with the State Govt. Circle rates declared by the Govt., for the purpose of levy of stamp duty are applicable to transfer of such rights in land.

Stamp duty rates as applicable in Rajasthan are envisaged in schedule to the Stamp Duty Act. Rates of stamp duty applicable to conveyance of movable and immovable property are given in Article 21 of the Schedule. In case of immovable property, the rates of stamp duty is 11% of market value. Explanation-1 to article 21 reads "For the purpose of this Article an agreement to sell an immovable property or an irrevocable power of attorney or any other instrument executed in the course of conveyance or lease e.g. allotment letters, patta, license etc. shall, in the case of transfer of the possession of such property before, at the time of or after the execution of any such instrument, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly:"

Rates of stamp duty applicable to lease of immovable property are given in Article 33 of the Schedule to Stamp Duty Act.

Where the lease purports to be a term in excess of 20 years or in perpetuity or where the term is not mentioned the same duty as on conveyance (No. 21) on the market value of the property, which is the subject matter of lease.

By perusal of the above, it is abundantly dear that the transfer of leasehold property, which is in perpetuity or term is not mentioned, then the applicable rates of stamp duty are same as on conveyance deed/sale deed."

10. The assessee describing the lease as a perpetual lease further refers to the stamp duty applicable on the transfer of property under such lease as the rate applicable to the conveyance deed/sale deed. This also shows that the assessee is transferring the land as an owner.

11. The judgment of this Tribunal in the case of Shri Krishan Dass Vs. Department of Income Tax dealt with a case where lease was for a period of 90 years and the rights were transferred for the remaining period of 54 years. Similarly, in the case of Atul G. Puranik Vs. ITO dated 13.05.2011, the lease period was for 60 years. In the present case, the facts are different in as much as the lessor has entered into a perpetual lease with the lessee/assessee. Though the revenue records show the State of Rajasthan as the owner but since the lease is perpetual, the same would have no effect on taxability. The argument of the assessee that the State of Rajasthan has been shown as the owner in the revenue records is of no significance for adjudication of applicability of Section 50C as the present case is of a perpetual lease deed. We, therefore, hold that Section 50C is applicable to the facts of the assessee and uphold the order passed by the AO. The grounds of appeal raised by the revenue are allowed."

4. This court is of opinion that there is no merit in the appellant/assessee's contentions that the occupancy rights are not in the nature of capital assets, the transfer of which do not attract capital gains, as to exclude application of Section 50C. The rights (towards occupancy) are nearly permanent, having regard to the nature of holding. Moreover, the issue of transfer of lease rights (in the case of lease for 99 years, relating to agricultural land) was considered in *R.K. Palshikar (HUF) v. Commissioner of Income Tax*, AIR 1988 SC 1305. The court observed as follows:

“The next question which we have to consider is whether the provisions of Section 12-B of the said Act can be brought into play, although, what was transferred was only lease hold interests in the lands in question. In this connection, it is significant that the leases are for a long period of 99 years and in all the transactions of lease premium has been charged by the assessee for the grant of the lease concerned. In Traders and Mines Ltd v Commissioner of Income Tax, [1955] 27 ITR p. 341 a case decided by a Division Bench of the Patna High Court, the assessee let on lease for 99 years a portion of a Zamindari acquired by it. The lease related to the surface right together with nine mica mines located in that area. The consideration for the lease was the payment of a 'salami' and a reserve rent per year. The Income-tax Officer determined the cost to the assessee of the mineral rights and after deducting this amount from the salami, he assessed the balance to tax as capital gains under Section 12-B of the said Act. It was held by the Patna High Court that the gains arising from the said transaction were rightly taxed. This decision has been cited without comment by Kanga and Palkhivala in their commentary on the Law of Income-tax (7th Edition) at page 550 and no contrary case has been cited in the said text book or has been

brought to our attention. It is true that the decision of the Patna High Court relates to a case of mining lease, but to our mind, the principle laid down in that case can well be applied to the case before us. In the first place, the lease is for a long period, namely, 99 years, hence it would appear held that under the leases in question the assessee has parted with an asset of an enduring nature, namely, the rights to possession and enjoyment to the properties leased for a period of 99 years subject to certain conditions on which the respective leases could be terminated. A premium has been charged by the assessee in all the leases. In these circumstances, we fail to see how it could be said that the provisions of Section 12-B of the said Act cannot be brought into play. The grant of the leases in question, in our view, amounts to a transfer of capital assets as contemplated under Section 12-B of the said Act.”

The above decision in *Palshikar (supra)* was approved in a subsequent judgment i.e. *A.R. Krishnamoorthy v. Commissioner of Income Tax*, (1989) 176 ITR 417 (SC).

5. It is therefore held that no question of law arises; the appeal is consequently dismissed as unmerited.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 26, 2018