

OD - 6

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/50/2025
IA NO: GA/1/2025
TAMAL KUNDU

VS

ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX
NATIONAL E-ASSESSMENT CENTRE, DELHI

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM

-A N D-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

Date : 11th April, 2025.

*Mr. Somak Basu, Adv.
Mr. Swagato Kabiraj, Adv. ...for appellant.*

Mr. Tilak Mitra, Adv. ...for respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 20.11.2024 passed by the Income Tax Appellate Tribunal “B” Bench, Kolkata [Tribunal] in ITA NO.1797/KOL/2024 for the assessment year 2018-19. The assessee has raised the following substantial questions of law for consideration.

“a. Whether Ld. ITAT erred in law in not appreciating that addition under the provision of section 56(2)(x) of the Act cannot be made for the previous year relevant to assessment year 2018-19 as the purchase/sale/transfer of the said rice mill took place in the previous year relevant to the assessment year 2017-18 and not in the assessment year 2018-19 ?

b. Whether Ld. ITAT erred in law in not appreciating that the de-facto transfer of immovable property in terms of section 2(47)(ii) read with and 2(47)(vi) of the Act took place on the date of ‘AGREEMENT FOR SALE’ (i.e. December 30, 2016), as the total sale consideration of Rs.86 Lac was paid by your petitioner (second party/purchaser) to the first party (seller) through banking channel and

possession of rice mill and all rights and benefits accruing therefrom were surrendered by the first party in favor of your petitioner and production of the said rice mill was started by your petitioner and the resulting profit was earned therefrom was offered to income tax by your petitioner for the assessment year 2017-18 ?

c. Whether Ld. ITAT erred in law in not appreciating that as per section 2(47)(ii) of the Act, extinguishment of right in capital asset, in the present case, took place on the date of execution of 'AGREEMENT FOR SALE' being December 30, 2016, as the assessee received such capital asset on December 30, 2016, in return for the payment of full consideration of Rs.86 Lac on the aforesaid date ?

d. Whether Ld. ITAT erred in law in not appreciating that section 2(47)(vi) of the Act provides for enjoyment of immovable property by the transferee irrespective of the situation that the transfer of the immovable property under the provisions of the 'Transfer of Property Act, 1882', has taken place or not and in the present case, the assessee (second party/purchaser of rice mill) was enabled enjoyment of the said immovable property with effect from December 30, 2016 ?"

We have heard Mr. Somak Basu, learned advocate assisted by Mr. Swagato Kabiraj, learned advocate for the appellant and Mr. Tilak Mitra, learned advocate for the respondent.

The short issue which falls for consideration is whether the assessee was right in contending that they purchased the assets in question namely, a rice mill should be taken to be on the date when they entered into the agreement for sale of the property which was made on 13.12.2016 or when the registered sale deed was executed and registered on 21.3.2018.

The facts which are not in dispute are that the assessee entered into an agreement for sale with the vendor for sale of a rice mill situated in the district of Purulia. The relevant terms and conditions of the agreement for sale has been noted by the tribunal and extracted in the impugned order from which it is seen that the assessee which was described as a second party in the agreement for sale was

required to pay a total sale consideration of Rs.86 lakhs as full and final payment for sale of the rice mill along with the factory plant and machinery and that the assessee was required to pay the said amount within 30.12.2016. Upon such payment, the vendor was bound to execute the sale deed within two years on receipt of the entire sale consideration. Further, the agreement states that the vendor on receipt of the amount of Rs.86 lakhs will immediately deliver possession of the factory premises to the assessee and the assessee shall have a right to take electricity connection, trade licence, Government permit and all other necessary licences to run the rice mill and the vendor will not give any objection to the assessee before any authority or law or Government office. Further, the agreement states that on payment of Rs.86 lakhs on 30.12.2016 the assessee shall have a right to run the business in the factory premises. The tribunal does not dispute the fact that the entire sale consideration was paid by the assessee on the date when the agreement for sale was executed and that the assessee was put in possession of the rice mill along with the plant and machinery and they were also commenced production in the rice mill. If such is the nature of the transaction what is required to be seen is whether this will qualify to be construed as transfer as defined under section 2(47) of the Act.

The Hon'ble Supreme Court in *Sanjeev Lal vs. CIT, (2014) 365 ITR 389 (SC)* considered this issue and the question which fell for consideration before the Hon'ble Supreme Court was whether the entire property (therein) can be said to have been sold at the time when an agreement to sell is entered into. The Hon'ble Supreme Court pointed out that in normal circumstances the afore-stated question has to be answered in the negative. However, looking into the provision of section 2(47) of the Act which defines the word 'transfer' in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital

asset can be deemed to have been transferred. After noting the definition of transfer as defined under section 2(47) of the Act, in particular, clause (ii) it was pointed out that in the light of the definition of transfer as defined under section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of capital asset. The court examined the facts of the said case and found that pursuant to the conditions contained in the agreement for sale the vendee in the said case had acquired a right in respect of the property in question and the right of the vendor stood extinguished because of execution of the agreement for sale. Therefore, what is required to be taken note of is that a purposive interpretation of the provision of the Act should be given while considering a claim for exemption of tax and that apart there should be a harmonious consideration of the provisions which sub-serve the object and purpose should also be made while construing any provision of the Act, more particularly, when one is concerned with exemption from payment of tax. A similar view was taken by the Hon'ble Supreme Court in *Commissioner of Income Tax vs. Balbir Singh Maini*, (2017) 398 ITR 531 (SC). In the said case, the Hon'ble Supreme Court took note of the various clauses in section 2(47) of the Act and what was relevant in the said case was clause (vi) and the Hon'ble Supreme Court did not agree with the view taken by the High Court and held that under section 2(47)(vi), any transaction which has the effect of transferring or enabling the enjoyment of any immovable property should come within its purview. Therefore, the legal issue is well settled and the view taken by the tribunal that on execution of the agreement for sale no right accrues in favour of the assessee does not lay down on the correct legal principle. That apart, the sale transaction was assessed to tax for the assessment year 2017-18 and the said assessment was subject matter of reopening under section 147 of the Act and the re-

assessment was completed. In fact, the learned tribunal while considering the second issue as to the applicable circle rate of the property has held in favour of the assessee by taking note of the fact that the entire sale consideration has been paid at the time of execution of the agreement of sale and, therefore, the stamp duty value/circle rate as applicable on 30.12.2016 has to be applied in the assessee's case. Therefore, this finding on the second issue is contrary to the finding rendered by the tribunal on the first issue which is the preliminary issue. Thus, we are of the view that the learned Tribunal committed an error in coming to the conclusion that the transfer did not take place in favour of the assessee on and from the date of execution of the agreement of sale pursuant to which the entire sale consideration was paid and the assessee was put in possession of the property which was purchased by them.

For the above reasons, the appeal is allowed. The order passed by the learned tribunal is set aside and the substantial questions of law are answered in favour of the assessee.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)