



THE HIGH COURT OF DELHI AT NEW DELHI

ITA.No.48/2000

Judgment delivered on: 29.10.2004.

SHRI ASHOK SOI

...Appellant

- versus -

COMMISSIONER OF INCOME-TAX

...Respondent

Advocates who appeared in this case:

For the Appellant : Mr C.S. Aggarwal, Sr. Advocate with Mr Salil Aggarwal and Mr
Prakash Kumar.
For Respondent : Mr R.D. Jolly with Mr Ajay Jha.

CORAM:-

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

B.C. PATEL, CJ (ORAL)

1. The assessee has approached this court against the decision rendered by the Income-tax Appellate Tribunal in ITA.No. 48/2000, for the assessment year 1995-96, under Section 260A of the Income-Tax Act, 1961 (hereinafter referred to as "the Act"). The following questions of law were framed by the court on 19.09.2000:-



- “1. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that assessee is liable to pay capital gains tax on a share of 25% of the total sale consideration in respect of property No.22, Darya Ganj, New Delhi?
2. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that assessee was not entitled to deduction under Section 48 of the Income-tax Act, 1961 in respect of the amount claimed to have been paid and received by Shri B.N. Soi from the sale proceeds of property No.22, Darya Ganj, New Delhi?”

2. So far as question No.1 is concerned, it refers to transfer of a property bearing No.22, Darya Ganj, New Delhi. The sale deed of this property which was executed on 30th May, 1994 is at page 93 of the paper book. In the said Sale Deed, the Vendors-Party No.1 refers to four persons, namely, (1) Shri Ashok Soi, the assessee, (2) his wife, Smt Bulbul Soi, (3) Shri Aditya Soi, son of the assessee, and (4) another son, Shri Abhai Soi. The Vendee is M/s P. Tex Builder (P) Ltd. In the said Sale Deed, there is a reference to one Shri B.M. Soi, father of the assessee, as a Confirming Party. The recitals, inter alia, read as under:-

“ Whereas the Vendors-Party No.1 are the absolute



owners and in possession of the Entire Built-up property with its roof with free-hold land underneath measuring about 3085.00 sq yds. or whatsoever is more or less with the boundaries, comprising of 5 plots of varying sizes as detailed below and which are more fully shown and separately identified in the plan annexed hereto bearing Property Municipal No.22, situated at Darya Ganj, Ward No.XI, New Delhi-110002."

The other recitals in the Sale Deed indicate the facts with regard to the ownership of the property in question. The grandmother of Shri Ashok Soi, the Assessee, was the original owner and by a deed of gift registered on 14.05.1957 with sub-Registrar, Delhi, she gifted the said property to her two sons, namely, (1) Shri B.N. Soi, the Confirming Party and (2) Shri J.Nath Soi, uncle of the assessee. However, in view of the subsequent disputes, the matter was referred to Arbitration and by an Award dated 03.04.1965, the assessee, one of the Vendors herein was declared to be the sole owner of the said property in entirety. The said award was made a Rule of the court by an order dated 17.04.1965. The assessee, thereafter in 1968, threw this property in to the hotch potch of Shri Ashok Soi H.U.F. of which he was the Karta. The Vendors-Party No.1 only were the members of the said H.U.F. The recitals further indicate that the said Shri Ashok Soi remained the owner of the aforesaid entire built-up property with its roof with free-hold underneath admeasuring about 3,085 sq. yds. etc. (It should, however, have been indicated that after 1968, Shri Ashok Soi held the property as Karta). The recitals further indicate that in view of

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the disputes raised by Smt Bulbul Soi, a suit being suit No.180/80 was filed for the partition of the said property No. 22 and another property No.23, Darya Ganj, New Delhi. It appears that there was a preliminary decree dated 14.10.1980 wherein it was declared by the parties that alongwith Shri Ashok Soi, his wife Smt. Bulbul Soi and their two sons were equal owners each having an equal 1/4th undivided share and interest in the said property. So far as Shri B. N. Soi (the Confirming Party) is concerned, he was merely entitled to receive certain payments out of the sale of the property as stated in the decree and that too for settlement his claims, whatever they may have been. Subsequent to the preliminary decree, there was a further settlement arrived at between the parties, namely, the Vendors-Party-1 and the Confirming Party and they filed a joint application being IA.No. 4898/93 in the said suit in the High Court of Delhi and that agreement came to be recorded so far as the property No.22, Darya Ganj, New Delhi is concerned. Pursuant to the order made on this application, the parties were permitted to sell the property in question. On 28.05.1993, the learned Single Judge of this court disposed of the suit in terms of the compromise application. The application of compromise is at page 156 of the paper book. In para 5 it is specifically mentioned:

“The sale consideration shall be divided between the parties as followed:

- | | |
|-------------------|---------|
| 1) Plaintiff No.1 | 23.1/3% |
| 2) Plaintiff No.2 | 23.1/3% |
| 3) Plaintiff No.3 | 24.2/3% |
| 4) Defendant No.1 | 16.2/3% |
| 5) Defendant No.2 | 12%” |



3. It is specifically stated therein that the payment to defendant No.2 (in the said suit), namely, Shri B. N. Soi, the Confirming Party and father of the assessee, as aforesaid was to be made in full and final settlement of all his claims. Reading the aforesaid clause, it is clear that son, daughter-in-law and grand sons agreed to pay something out of their shares of the sale proceeds to the Confirming Party not because he was the owner of the property but towards settlement of his claims and no further. The sale deed at page 96 of the paper book also clearly indicates that the Vendors-Party-1 are the absolute owners of the property in question and that the Vendors-Party-1 were fully entitled/empowered to dispose of the same etc. Clause (4) of the sale deed is also required to be reproduced:-

"(4) That the Vendors-Party-1, do hereby sell, convey, transfer and assign the aforesaid Entire Built-up Property with its Roof with free hold land underneath measuring about 3085.00 sq. yds or whatsoever is more or less in the boundaries and more fully described, shown and separately identified in the plan annexed hereto known as No.22, Municipal No. 4735/XI, fitted with water and electric connections, situated at Darya Ganj, New Delhi and bounded as above alongwith all their Ownership rights, titles, interests, with easements, privileges, with necessary fixtures and fittings, electrical/sanitary



installations whatsoever appertenant to the said Property UNTO the "VENDEE-PARTY NO.2" absolutely and for ever who have become the absolute and exclusive Owner of the above mentioned Entire Built-up property with its Roof with free-hold land underneath measuring about 3085.00 sq.yds known as No.22, Municipal No.4735/XI, Darya Ganj, New Delhi, under sale from to-day and shall enjoy all rights or Ownership etc., therein hereinafter including sale thereof. The "VENDORS-PARTY No.1" have no rights, titles, interests or lien etc. left whatsoever of any sort/nature in the aforesaid Entire Built-up Property with its Roof with free-hold land underneath measuring about 3085.00 sq.yds under sale henceforth after the execution/registration of this "SALE DEED".

4. Reading this document, it is very clear that the deed was executed by a Vendor-party-1, namely, the assessee, his wife and their two sons and it is they who have conveyed the title of the property in favour of the vendee. There is nothing to indicate that the father of the assessee conveyed anything to the vendee. He was merely a Confirming Party as indicated in clause (10) which reads as under:

"(10) that the "CONFIRMING PARTY/PARTY NO.3" shall have no objection in the sale of the aforesaid property thus have joined/signed this "SALE DEED" in token of acceptance in the sale of the aforesaid property."

5. At this juncture, it is also required to be noted that it is



Vendor-Party-1 obtained the necessary Income-Tax Certificate in Form No.34-A and 37-1 under Section 230A(1) and 269 of the Income-Tax Act, 1961 from the Income-Tax Department concerned vide ITCC dated 02.03.1994 and 07.03.1994. Thus, it is very clear that the assessee, his wife and their two sons were the owners of the property and they have conveyed the right, title and interest in the property to the vendee and, therefore, whatever amount is received under the document, if capital gain arises, tax thereon is required to be recovered by the revenue in the equal shares as indicated in the document. The learned counsel for the assessee submitted that father being a person residing with them, they agreed to give a share and, therefore, he should be considered as a person entitled to receive the share from the property. From an analysis of the sale deed and the surrounding circumstances, it cannot be said that Shri B. N. Soi had any interest in the property in question.

6. So far as the compromise agreement is concerned, it was incumbent upon the Vendor-Party-1 to pay the amount out of the sale proceeds. This, in no way diminished the shares of the four Vendors. Their shares remained 1/4th each. Accordingly, capital gain was to be calculated on the basis of the assessee's ownership of



the property to the extent of his share which was 25%. The payment to Shri B.N. Soi would in no way alter the computation of capital gains at the hands of the assessee. We are in agreement with the views expressed by the Tribunal that the capital gain is required to be computed on the basis of equal shares of the owners. Therefore, the answer of question No.1 is required to be given in favour of the revenue and against the assessee.

7. So far as the question No.2 is concerned, the learned counsel submitted that the amount paid to Shri B.N. Soi by the assessee was in the nature of expenditure incurred wholly or exclusively in connection with such transfer and, therefore, would be entitled to get the deduction under Section 48(i) of the Act. It would be considered as an expenditure wholly and exclusively in connection with the transfer. The amount was required to be paid in view of the statement made by the family members. The learned counsel relied upon a decision of the Madras High Court in the case of CIT v C.V. Soundararajan and Another 150 ITR 80 which has been considered by the Tribunal. It may be noted that this decision was rendered at the stage of admission and the reference petitions were rejected at the initial stage. It may be noted that in



that case, there was no dispute that under a partition deed, the mother had a right of residence till her life time. There was no dispute that a sum of Rs.60,000/- was paid to the mother for getting the relinquishment of her right of residence during her life time. It is in these circumstances that the question was raised whether the sum paid to the mother can be taken as a part of consideration received by the sons. It is in this context that the Tribunal and the High Court examined the case. However, in the instant case, as indicated earlier, the assessee was the absolute owner of the property. It is he who threw the property into the HUF and, therefore, when the property is transferred consequent upon a partition suit by the owners, any amount paid to settle the claims of Shri B. N. Soi , who had no right, title or interest in the property cannot be regarded as "*expenditure incurred wholly or exclusively in connection with such transfer*". The payment to Shri B.N. Soi had no connection with the transfer. It is only that out of the sale proceeds, the claims whatever they may have been, of Shri B.N. Soi were to be settled in the manner indicated in the compromise. If the owners mutually agreed, as indicated in the instant case, to pay the said amounts to Shri B.N. Soi to settle their claims, it would not



mean that by virtue of this Shri B.N. Soi had or got any right in the property. The payment to Shri B. N. Soi cannot be regarded as payment for any relinquished right, as in the Madras case. As such, the payment would not be covered within clause (i) of Section 48 of the Act. In that view of the matter, the second question is also required to be answered against the assessee and in favour of the revenue.

Answered accordingly. The appeal is dismissed.

Belal -
CHIEF JUSTICE

Amal -
BADAR DURREZ AHMED, J

October 29, 2004
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