



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.05.2010

+ **ITA 1322/2009**

COMMISSIONER OF INCOME TAX Appellant

- versus -

SHASHI CHARLA

..... Respondent

AND

+ **ITA 1323/2009**

COMMISSIONER OF INCOME TAX Appellant

- versus -

ATUL CHARLA

..... Respondent

AND

+ **ITA 1326/2009**

COMMISSIONER OF INCOME TAX Appellant

- versus -

BALDEV RAJ CHARLA

..... Respondent

AND

+ **ITA 1328/2009**

COMMISSIONER OF INCOME TAX Appellant

- versus -

JYOTI CHARLA

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr Salil Aggarwal with Mr Prakash Kumar

CORAM:-

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 ?

BADAR DURREZ AHMED, J (ORAL)

CM 17469/2009, CM 17471/2009, CM 17474/2009 & CM 17478/2009

The delay in re-filing the appeals is condoned.

These applications stand disposed of.

ITA 1322/2009, ITA 1323/2009, ITA 1326/2009 & ITA 1328/2009

1. These appeals filed by the revenue pertain to the block period 01.04.1996 to 24.09.2002 and arise out of the Income Tax Appellate Tribunal's order dated 29.12.2008 in IT (SS) A Nos. 92, 93, 94 and 95/Del/2007.

2. A company by the name of Ambitious Gold Nibs Company Private Limited (hereinafter referred to as 'Ambitious Gold') acquired a property measuring 2829 sq. yds at C-101 Maya Puri Industrial Area on 17.01.1966 from the DDA. The said property was sold by the said company on 29.11.1999. During search operations conducted in the residential premises of the assessee herein, who are directors in Ambitious Gold, a document entitled "family arrangement" and which purported to have been reduced to writing on 01.09.1997, was recovered. The said document was apparently effective from 31.07.1992. According to the assessee, by virtue of the said family arrangement, half of the company's said property came to the share of the present assessee and the other half went to the share of



assesseees was sold for an amount of Rs 2.09 crores. The Assessing Officer assessed capital gains at the hands of the present assesseees on the basis of the said seized document.

3. Thereafter, the matter travelled to the Income-tax Appellate Tribunal on the question of what would be the proper cost of acquisition of the said property so as to arrive at the correct computation of capital gains at the hands of the assesseees. The assesseees herein sought to invoke the provisions of Section 49(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). The said plea was accepted by the Tribunal and the revenue is in appeal before us on this issue.

4. While examining the issue of applicability of Section 49(1) of the said Act, we find that the same is not at all applicable. Section 49(1) deals with the computation of cost with reference to certain modes of acquisition. It, *inter alia*, provides that where the capital asset became the property of the assessee on any distribution of assets on the total or partial partition of a Hindu Undivided Family or on any distribution of assets on the liquidation of a company, then 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. In the present case, we find that the asset in question, namely, C-101 Maya Puri Industrial Area was not the property of a Hindu Undivided Family. Secondly, it was owned by the said company, namely, Ambitious Gold and



the company. Consequently, the said capital asset continued to be owned by Ambitious Gold and did not become the property of the assessee herein and, therefore, Section 49(1) would not apply.

5. While examining the issue of applicability of Section 49(1), we noticed that the Assessing Officer and the authorities below were all wrong in computing capital gains at the hands of the respondents/ assessee because they never became the owners of the property. It is an admitted fact that the said property was sold by the said company, namely, Ambitious Gold. Consequently, any money received by the respondents/ assessee in their capacity as directors, would be for and on behalf of the company and it would not be a sale by the assessee but by the said company. This is also borne out from the fact that the company had been showing the capital asset in its balance sheets up to the date of the sale. Therefore, it was wrong on the part of the Assessing Officer and the authorities below to compute capital gains at the hands of the respondents/ assessee and the question of capital gains ought to have been examined in the assessment of the company, that is, Ambitious Gold. Unfortunately, that has not been done.

6. Consequently, the respondents/ assessee could not have been subjected to payment of capital gains and, therefore, the capital gains would be at the hands of the company, namely, Ambitious Gold. It goes without saying that once this is done, then the amounts paid by way of tax on capital gains by the respondents/ assessee would have to be adjusted against the dues from the company on account of the capital gains to be paid in the



respondents/ assessees, it is found that the tax paid is more than the tax due from the company, then the surplus would be refunded to the respondents/ assessees. The counsel for the respondents/ assessees submits that no benefit has been taken by the respondents/ assessees in respect of the tax on capital gains paid by them. If any benefit has been taken, the same would have to be reversed in accordance with law.

7. In view of the aforesaid observations and directions, we set aside the orders passed by the lower authorities on this aspect of the matter. The Assessing Officer would have to compute the capital gains in the hands of the said company in the light of the directions given above. We also place it on record that the counsel for the respondents/ assessees has fairly consented to this order being passed.

These appeals stand disposed of in the aforesaid terms.

BADAR DURREZ AHMED, J

V.K. JAIN, J

May 06, 2010
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