



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 26.08.2014

W.P.(C) 5560/2013

RASHDA SIDDIQUI

Petitioner

versus

COMMISSIONER OF INCOME TAX-VIII, NEW DELHI & ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Karthik Ashok.

For the Respondents : Mr Balbir Singh and Mr Abhishek Singh.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 25.03.2013 passed by the Commissioner of Income Tax under Section 264 of the Income Tax Act, 1961 (herein after referred to as 'the said Act').



2. The only issue that is raised in this petition pertains to the Assessment Year 2006-07 and is with regard to a painting which was sold by the petitioner/assessee in the year ending 31.03.2006. The painting was sold by the petitioner/assessee for a sum of Rs.34 lacs. The painting had been acquired by the assessee prior to 01.04.1981 and, therefore, the value of the painting as on 01.04.1981 was taken and indexed upto the date of the sale to compute the indexed cost of acquisition at Rs.16,15,250/-. When the petitioner/assessee filed her return of income, she included this computation and disclosed long term capital gains of Rs.17,84,750/-, being the difference between the sale price and the indexed cost of acquisition. On the said amount, she paid tax of Rs.3,66,434/- and interest of Rs.75,852/- totalling to Rs.4,42,286/- on account of tax and interest.

3. Subsequently, the petitioner is stated to have realised that Section 2 (14) of the said Act which defined 'capital asset' had been amended with effect from 01.04.2008 whereby 'paintings' were specifically included in the expression 'capital asset'. Prior to 01.04.2008 paintings were not so included and were regarded as personal effects which were excluded from the purview of 'capital asset'. Section 2(14) was amended with effect from 01.04.2008. Paintings were taken out of the purview of the personal effects and were



specifically brought within the ambit of capital assets. It was contended by the petitioner that the mistake made by her by treating the painting as a capital asset and not as a personal asset even for assessment year 2006-07 (i.e., prior to 01.04.2008) was realized subsequent to her filing of the return and receipt of the intimation under Section 143 (1) of the said Act. Thereupon, she moved an application seeking rectification of the mistake and consequent refund of the said amount of Rs.4,42,286/-. That application was rejected by the Assessing Officer on 23.01.2012. Being aggrieved thereby, the petitioner/assessee filed a revision application under Section 264 which also has been rejected by the Commissioner by virtue of the impugned order dated 25.03.2013.

4. For the assessment year 2006-07 (i.e., prior to 01.04.2008), Section 2(14), to the extent relevant for our purposes, read as under:-

- “(14) “Capital asset” means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—
- (i) xxxx xxxx xxxx xxxx
 - (ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

Explanation.— For the purposes of this sub-clause, “jewellery” includes—



- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;”

XXXX XXXX XXXX XXXX XXXX”

By virtue of the Finance Act, 2007 sub-clause (ii) of section 2(14) of the said Act was substituted, with effect from 01.04.2008, by the following:-

- “(ii)personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—
- (a) jewellery;
 - (b) archaeological collections;
 - (c) drawings;
 - (d) paintings;
 - (e) sculptures; or
 - (f) any work of art.

Explanation.— For the purposes of this sub-clause, “jewellery” includes—

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;



- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;”

5. The issue as to whether a painting could, at all, be a personal effect or not, was considered by a Division Bench of this Court in **Faiz Murtaza Ali v. Commissioner of Income Tax: (2014) 360 ITR 200 (Delhi)**. This court, for the period prior to 01.04.2008, clearly noted that paintings had been considered to be personal effects. However, in the said decision, after referring to the Supreme Court decision in **HH Maharaja Rana Hemant Singhji v. CIT (1976) 103 ITR 61 (SC)**, it was also noted that only those articles were to be included in the definition of ‘personal effects’ which were intimately and commonly used by the assessee. It was also concluded in **Faiz Murtaza Ali (supra)** that the mode of acquisition of the articles was not material and what had to be examined was whether, in fact, the articles in question were in the personal use of the assessee.

6. Referring to the decision of the Gujarat High Court in **Himatlal C. Valia v. CIT: (2001) 248 ITR 262 (Guj.)** as also to the decision of the Supreme Court in **CIT v. H H Maharani Usha Devi: (1998) 231 ITR 793 (SC)**, the Division Bench in **Faiz Murtaza Ali (supra)** observed that the



frequency of use of an article was also not a relevant factor for determining whether the article was a personal effect or not.

7. We also notice from the said decision in *Faiz Murtaza Ali (supra)* that in that case there was evidence of the fact that the articles in question, which included paintings, had been held by the assessee therein for personal use and there was no material which had been brought out by the Assessing Officer or the revenue to indicate anything to the contrary. On the basis of the evidence on record, the Court found that the articles in question ought to have been held to be ‘personal effects’ of the assessee. This is evident from the following passage from the said decision:-

“11. Looking at the totality of circumstances we are of the view that the assessee has been able to show that the articles in question were inherited and/or received by him by way of gift. Those articles were moveable properties. They did not include any jewellery and they had been held for personal use by the assessee and they were subsequently sold by him to various buyers. The fact that these articles were held by him for personal use has been indicated in the affidavit filed by the assessee before the assessing officer. No material has been brought out by the assessing officer or the revenue to indicate that the affidavit is false. Therefore, on the basis of evidence on record, the articles in question ought to have been held to be “personal effects” of the assessee.”



8. In the present case, we find that since the assessee herself in her return had not claimed the painting as a personal effect, there is no evidence on record on either side. The only thing that we can say with certainty is that prior to 01.04.2008, a painting could be regarded as a 'personal effect'. But, before a painting can be regarded as a 'personal effect' there must be evidence on record to show that it was intimately and commonly used by the assessee. There is no such evidence on either side, and, therefore, we feel that for this limited issue, the matter be taken up by the Assessing Officer to determine the same on the basis of evidence and in view of the position in law discussed above. For this limited aspect, the matter is remitted to the Assessing Officer. The impugned orders are set aside.

9. The assessee is given liberty to file additional documents within two weeks from today and that the Assessing Officer shall return a conclusive finding on the above aspect within three months from today.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 26, 2014

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