

Madras High Court

Commissioner Of Income-Tax vs K. Raja Gopala Rao on 20 November, 2000

Equivalent citations: 2001 252 ITR 459 Mad

Author: R J Babu

Bench: R J Babu, K Gnanaprakasam

JUDGMENT R. Jayasimha Babu, J.

1. The question referred is as to whether, on the facts and in the circumstances of the case, and having regard to the provisions of Sections 48 and 55(2) of the Income-tax Act, 1961, the Tribunal was right in holding that the mortgage expenses incurred in connection with the acquisition of the property and the interest payable on the mortgaged amounts which have been utilised as part of the consideration, would form part of the cost of acquisition of the property for the purpose of computation of capital gains in the assessee's case.

2. The assessee is an individual who was carrying on the business of running a hotel. During the assessment years 1973-74 and 1974-75, the assessee received capital gains on the sale of his property at No. 4, Cathedral Road, Madras, which property he had purchased for Rs. 5,45,349 on December 6, 1970. On the same day, he had mortgaged the property to secure a loan of Rs. 4,00,000 which loan had been raised solely for the purpose of paying his vendor and for meeting the cost of the stamp duty on the sale deed. The Revenue did not dispute the correctness of the claim of the assessee that all the money borrowed under the mortgage was utilised solely for the purpose of paying a part of the consideration for the sale and for meeting the cost of the stamp papers.

3. The assessee claimed that the cost of execution of the mortgage as also the amount of interest paid to the mortgagee till the date of the sale of the property, a part of which was sold in the assessment year 1973-74 and the remaining part in the assessment year 1974-75, was required to be added to the purchase price while computing the cost of acquisition. That claim was disallowed by the Assessing Officer as also by the first appellate authority, but was allowed by the Tribunal on further appeal.

4. The Tribunal did so, and rightly by relying upon the law laid down by the Supreme Court in the case of *Challapalli Sugars Limited v. CIT*. The apex court, in the case held, as stated in the headnote in the report that:

"As the expression 'actual cost' has not been defined, it should be construed in the sense which no commercial man would misunderstand. For this purpose it would be necessary to ascertain the connotation of the expression, in accordance with the normal rules of accountancy prevailing in commerce and industry. The accepted accountancy rule for determining cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets."

5. Here, there can be no doubt that the cost of acquisition to the assessee was not merely the amount that he had paid to the vendors but also the cost of the borrowing made by him for the purpose of

paying the vendor and obtaining the sale deed. The fact that the mortgage was executed after the sale deed was obtained even though both the documents were signed and registered on the same day, does not render the mortgage and the borrowing made thereunder irrelevant to the task of determining the cost of acquisition. Without the money borrowed, the assessee would not have been in a position to buy the property. The purchase not having been made with his own funds, he was required to pay interest for the borrowed fund and secure the borrowing by creating a mortgage. Such mortgage could not have been created earlier as he had to first acquire title before encumbering the same. Payment of consideration for the sale indisputably having been made with the borrowed funds, the borrowing directly related to the acquisition and, interest paid thereon would form part of the cost of acquisition.

6. The facts of the case therefore clearly fall within the ratio of the judgment of the Supreme Court in the case of Challapalli Sugars Ltd. .

7. The question referred to us is therefore required to be and is answered in favour of the assessee and against the Revenue.