

Equivalent citations: 2006 5 SOT 89 Mum

Charanbir Singh Jolly vs Ito (Eighth) on 23/8/2005

ORDER

Dr. O.K. Narayanan, A.M.

These two appeals are filed by the assesseees for the assessment year 1998-99. These appeals are filed against the orders of the CIT(A)-XIII at Mumbai passed on 19-12-2001 and arises out of the assessments completed under section 143(3) of the Income Tax Act, 1961.

2.

The assesseees are brothers and the facts and circumstances of the cases are one and the same and, therefore, these appeals are disposed of through this common order.

3.

The assesseees herein had sold their houses situated at Hiranandani Gardens, Powai in Mumbai. Shri Charanbir Singh Jolly sold the house for a consideration of Rs. 22,05,372 and Shri Kanwarbir Singh Jolly sold his house for a consideration of Rs. 22,18,8 10. The houses were acquired by the brothers through agreements dated 31-3-1993 for a consideration of Rs. 5,25,000 and Rs. 5,85,056 respectively. The payments towards acquisition of the house property were made by the assessee in instalments between the period from 25-7-1992 and 17-6-1996. While computing the capital gains exigible on the sale of the house property, the assesseees have computed the indexed cost of the houses on the rate of indexation pertaining to the previous year 1992-93, in. which the first instalment of payment was, paid by the assesseees.

4.

But the assessing authority has taken a different view. He treated the first instalment paid by the assesseees as the cost of acquisition of the house property and treated the subsequent instalments paid by the assesseees as cost of improvements made from time-to-time. The result is that the total cost incurred by the assesseees for acquiring the houses were not taken as the cost of acquisition for the purpose of indexation, but, on the other hand, cost was taken at static points corresponding to the instalments paid by the assesseees. This has resulted in a differential loss of indexation benefit to the assesseees. As against capital gains of Rs. 13,40,651 and Rs. 13,50,408 disclosed by the assesseees respectively, the AO has determined a capital gain of Rs. 14,18,382 and Rs. 14,13,904 respectively. This position was accepted by the CIT(A) in first appeal, therefore, these appeals before us.

5.

We heard Shri Sanjay R. Parikh, the learned counsel appearing for the assesseees and Shri D.Z. Patel, the learned departmental representative appearing for the revenue.

6.

The learned counsel appearing for the assessee has relied on the decision of ITAT, Ahmedabad A-Bench in the case of ITO v. Smt. Kashmiraben M Parikh (1992) 44 TTJ 68 (Ahd-Trib) wherein the Tribunal has considered an analogous issue. In that, case, the agreement for the purchase of property was executed in 1979 by paying a token amount and the property was handed over after construction in 1981. The property was transferred in 1983. The assessee argued for long-term capital period and the assessing officer adopted

short-term capital period. The Tribunal held that the acquisition of the flat should be treated as the date of booking of the flat in November, 1978 and, therefore, it should be held that the assessee had held the property for more than three years and accordingly, the resultant gains would be long-term in nature. The learned counsel submitted that even though the decision, technical speaking, covers the question mainly of period of property held by an assessee, the date of acquisition has been accepted in the said judgment which is para materia to the question of cost of acquisition involved in the present case. The learned counsel has also relied on the decision of the Bombay High Court in the case of CIT v. Mrs. Hilla J.B. Wadia (1995) 216 ITR 376 (Bom).

7.

We heard both sides in detail and considered the matter carefully. The question to be considered in the present case is the cost of acquisition of the property under section 48. The house properties were purchased by the assesseees on instalment basis. This is the normal practice prevalent today in case of purchase of residential flats. Payments are never made in lump sum. Payments are made by instalments on the basis of a payment schedule starting from the booking date. The assessing officer has adopted the original cost of acquisition at the first instalment value whereas the assesseees has claimed the original cost of acquisition at the total payments made by them. Therefore, the real question is what is the cost of acquisition for the purpose of section 48; whether the amount of first instalment paid by the assesseees or the total amounts paid by the assesseees for acquiring the properties.

8.

A house property has got its own intrinsic /market value. The assessee might have ultimately purchased a property worth Rs. 22 lakhs. The first instalment paid by the assessee might have been Rs. 5 lakhs. The question is what is the original cost of acquisition of the houses whether it is Rs. 22 lakhs ultimately paid by the assesseees or Rs. 5 lakhs initially paid by the assesseees. According to us, the cost of the property is Rs. 22 lakhs and not Rs. 5 lakhs. As already stated, every property has got its own intrinsic/. market value irrespective of the mode of payment negotiated between the concerned parties. A house property worth Rs. 23 lakhs might be sold for Rs. 21 lakhs against a lump sum payment or it might be sold for Rs. 23 lakhs against instalment payments. Therefore, the maximum variation in the cost of the property depending upon the method of payment is only Rs. 2 lakhs, i.e., the difference between Rs. 23 lakhs and Rs. 21 lakhs. If the first instalment paid in that case was Rs. 5 lakhs, it could never be held that the cost of the property was Rs. 5 lakhs which is far less than the real value of Rs. 22 lakhs. This illustration makes the matter very clear. The cost or the value of the property remains the same subject to minor variations of interest of discount factor, irrespective of the mode of payments. The cost or value of the property does not get diluted for the reason that the cost of acquisition was paid by instalments. The basic idea of bringing the principle of indexation is to give some sort of protection to the assesseees from the on slaught of inflation. The effect of inflation could be measured only with reference to the total cost of acquisition of a property. If the effect of inflation is measured with the payment of the first instalment, the whole scheme becomes ridiculous. It is to be seen that the factor of inflation is not with reference to the payments made by the assessee but with reference to the value of the asset vis-a-vis the cost of acquisition of the sale consideration of the property.

9.

Therefore, in the facts and circumstances of the case, we are of the considered view that the cost of acquisition of the houses for the purpose of long-term capital gains computation is the total cost incurred by the assesseees and not the first instalment value as determined by the lower authorities. Accordingly, the contentions raised by the assesseees are accepted and the appeals are allowed. The assessing authority is directed to adopt the cost of acquisition as directed by us and re-compute the long-term capital gains taxable in the hands of the assesseees accordingly.

10.

In result, these two appeals are allowed.