

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4797/2008

COMMISSIONER OF INCOME TAX, PANJI

APPELLANT (S)

VERSUS

V.S.DEMPO COMPANY LTD. PANJI

RESPONDENT (S)

O R D E R

In the return filed by the respondent/assessee for the Assessment Year 1989-90 the assessee had disclosed that it had sold its loading platform M.V. Priyadarshni for a sum of Rs. 1,37,25,000/- on which it had earned some capital gains. On the said capital gains the assessee had also claimed that it was entitled for exemption under Section 54E of the Income Tax Act. Admittedly, the asset was purchased in the year 1972 and sold sometime in the year 1989. Thus, the asset is almost 17 years old. Going by the definition of long term capital asset contained in Section 2(29B) of the Income Tax Act, 1995 (hereinafter referred to as 'the Act'), it was admittedly a long-term capital asset. Further the Assessing Officer rejected the claim for exemption under Section 54E of the Act on the ground that the assessee had claimed depreciation on this asset and, therefore, provisions of Section 50 were applicable. Though this was upheld by the Commissioner of

Income Tax (Appeals), the Income Tax Appellate Tribunal allowed the appeal of the assessee herein holding that the assessee shall be entitled for exemption under Section 54E of the Act. The High Court has confirmed the view of the Commissioner of Income Tax (Appeals) and dismissed the appeal of the Revenue. While doing so the High Court has relied upon its own judgment in the case of "The Commissioner of Income-tax, Mumbai City-II, Mumbai vs. ACE Builders Pvt. Ltd." [(2005) 3 Bom CR 598]. The High Court has observed that Section 50 of the Act which is a special provision for computing the capital gains in the case of depreciable assets is not only restricted for the purposes of Section 48 or Section 49 of the Act as specifically stated therein and the said fiction created in sub-section (1) & (2) of Section 50 has limited application only in the context of mode of computation of capital gains contained in Sections 48 and 49 and would have nothing to do with the exemption that is provided in a totally different provision i.e. Section 54E of the Act. Section 48 deals with the mode of computation and Section 49 relates to cost with reference to certain mode of acquisition. This aspect is analysed in the judgment of the Bombay High Court in the case of "The Commissioner of Income-tax, Mumbai City-II, Mumbai vs. ACE Builders Pvt. Ltd." (2005) 3 Bom CR 598 in the following manner:

"In our opinion, the assessee cannot be denied exemption under Section 54E, because, firstly, there is nothing in Section 50 to suggest that the fiction created in Section 50 is not only restricted to Sections 48 and 49 but also applies to other provisions. On the contrary, Section 50 makes it

explicitly clear that the deemed fiction created in sub-section (1) & (2) of Section 50 is restricted only to the mode of computation of capital gains contained in Section 48 and 49. Secondly, it is well established in law that a fiction created by the legislature has to be confined to the purpose for which it is created. In this connection, we may refer to the decision of the Apex Court in the case of State Bank of India vs. D. Hanumantha Rao reported in 1998 (6) SCC 183. In that case, the Service Rules framed by the bank provided for granting extension of service to those appointed prior to 19.07.1969. The respondent therein who had joined the bank on 1.7.1972 claimed extension of service because he was deemed to be appointed in the bank with effect from 26.10.1965 for the purpose of seniority, pay and pension on account of his past service in the army as Short Service Commissioned Officer. In that context, the Apex Court has held that the legal fiction created for the limited purpose of seniority, pay and pension cannot be extended for other purposes. Applying the ratio of the said judgment, we are of the opinion, that the fiction created under Section 50 is confined to the computation of capital gains only and cannot be extended beyond that. Thirdly, Section 54E does not make any distinction between depreciable asset and non-depreciable asset and, therefore, the exemption available to the depreciable asset under Section 54E cannot be denied by referring to the fiction created under Section 50. Section 54E specifically provides that where capital gain arising on transfer of a long term capital asset is invested or deposited (whole or any part of the net consideration) in the specified assets, the assessee shall not be charged to capital gains. Therefore, the exemption under Section 54E of the I.T. Act cannot be denied to the assessee on account of the fiction created in Section 50."

We are in agreement with the aforesaid view taken by the High Court.

We are informed that the Gujarat High Court as well as Guahati High Court have also taken the same view in the following cases:

1. Commissioner of Income tax V. vs. Polestar Industries [2013 SCC online Gu 5517]
2. Commissioner of Income - Tax vs. Assam Petroleum Industries

(P.) Ltd. [(2003) 262 ITR 587].

We are also informed that against the aforesaid judgments no appeal has been filed.

In view of the foregoing, we do not find any merit in the instant appeal which is, accordingly, dismissed.

.....J.
[A.K. SIKRI]

.....J.
[ROHINTON FALI NARIMAN]

NEW DELHI;
SEPTEMBER 05, 2016.

ITEM NO.303

COURT NO.10

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4797/2008

COMMISSIONER OF INCOME TAX, PANJI

Appellant(s)

VERSUS

V.S.DEMPO CO.LTD. PANJI

Respondent(s)

Date : 05/09/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Y.P. Adhyaru, Sr. Adv.
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Ms. Akanksha Kaushik, Adv.
Ms. Anupama Dhurve, Adv.
Mr. Abhishek Puri, Adv.
Vasvi Jain, Adv.
Ms. Shobha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is dismissed in terms of the signed order.

Application pending, if any, shall be disposed of accordingly.

(Ashwani Thakur)
COURT MASTER

(Tapan Kr. Chakraborty)
COURT MASTER

(Signed order is placed on the file)