

Delhi High Court

Cit vs Smt. Sunita Aggarwal on 16 November, 2005

Equivalent citations: (2006) 204 CTR Del 527, 2006 284 ITR 20 Delhi

JUDGMENT The assessed sold a house situated in village Shahpur Jat for a sum of Rs. 30 lakhs. The capital gain on the said sale proceeds was invested by her in the purchase and renovation of a property at 1, Ram Kishore Road, Delhi. Benefit under section 54 was claimed by the assessed qua the said investment which was declined by the assessing officer on the ground that the sale transaction of the property had been made only on paper. In appeal the Commissioner (Appeals) upheld the disallowance of deduction on the ground that the property purchased by the assessed in fact comprised two distinct units owned by two different persons. The Commissioner was of the view that the assessed was entitled to the benefit of deduction only to the extent of purchase of one unit. The assessing officer was, therefore, directed to restrict the benefit under section 54 to 500 sq. yds. of land purchased by the assessed from one of the vendors. In a further appeal before the Tribunal the said view has been reversed and the assessed held entitled to a deduction under section 54. The Tribunal has on an appreciation of the available material recorded a clear finding of fact to the effect that the property purchased by her was a single unit and was being used for residential purposes continuously ever since the possession of the different portions of the said property was taken over from the vendors. The Tribunal held that the execution of four different sale deeds in respect of four different portions of the property did not materially affect the nature of the transaction or the nature of the property acquired since the property in question was being used by the assessed for her own purposes and investment made in the purchase of the same was, therefore, eligible for deduction under section 54. The Tribunal has in this regard observed as under :

"Not one fact of the above overwhelming evidence in favor of the assessed stands rebutted at the hands of the department. This leads but to the conclusion that the property, though purchased from two different persons, by virtue of 4 different sale instances in the shape of 4 different parcels, constitutes one single residential unit or house of the assessed. The assessed has been residing there with her husband and children even since. She has produced on record all possible evidence in this regard. All of this evidence is conclusive in nature. The department has not been able to rebut the same. In view of the above, the requirement under section 54 of the Act stands squarely met. Therefore, the exemption under section 54 is due to the assessed in toto. The learned Commissioner (Appeals) was not correct in restricting the exemption to Rs. 9.60 lakhs plus the cost as against the assessed's claim of Rs. 22,75,465. The purchase from Shanti Agarwal and M/s. Jupiter Builders P. Ltd., has erroneously been treated as separate and distinct. The assessed cannot be said to have acquired two properties. So much so, even though, the learned Commissioner (Appeals) himself admits that the assessed has only one residential house, he restricted the area of the residential house and held that the assessed had purchased two houses."

In the light of the above finding of fact recorded by the Tribunal no question of law much less a substantial question of law arises for our consideration in this appeal. This appeal accordingly fails and is hereby dismissed.