

Bombay High Court

Commissioner Of Income-Tax vs Abrar Alvi on 13 March, 2000

Equivalent citations: 2001 247 ITR 312 Bom

Bench: S Kapadia, A Shah

JUDGMENT

1. By a sale deed dated May 2, 1992, between the appellant, on the one hand, and Sameer Mehta (HUF), on the other hand, property bearing plot No. 22, "Janki Kutir", came to be sold. The dispute is regarding the cost of acquisition of the said property. The Assessing Officer took the value as on April 1, 1981, at Rs. 750 per sq. ft. After applying the cost index, the acquisition value was worked out at Rs. 36,03,680. The appellate authority overruled the decision of the Assessing Officer. The appellate authority came to the conclusion that the assessee was a tenant. Accordingly, the appellate authority valued the cost of acquisition at a nominal amount of Rs. 2,500. Being aggrieved, the matter was carried in appeal to the Tribunal, which came to the conclusion that what was transferred, vide sale deed dated May 2, 1992, was not the tenancy rights but the building "Janki Kutir" itself and, therefore, what was to be allowed as deduction for working out the capital gains was not the cost of tenancy but the cost of ownership rights. In view of the said finding, the Tribunal remanded the matter back to the Assessing Officer to work out the market value of "Janki Kutir" as on August 4, 1983, and allow as a deduction the cost of the asset sold to work out the capital gains. This is a pure finding of fact. No interference is called for. Hence, the appeal is dismissed.

2. Before concluding one more point needs to be mentioned. The assessee has paid an amount of Rs. 8 lakhs to his son, Abrar Alvi. Much prior to the sale of the property in 1992, Abrar Alvi has instituted a suit in the city civil court being Suit No. 4763 of 1986, seeking an injunction restraining the assessee from selling "Janki Kutir". Hence, the said amount of Rs. 8 lakhs was paid. On the facts, the Tribunal found that the amount was paid to remove the encumbrance. The Tribunal also applied the ratio of the judgment of this court in the case of CIT v. Shakuntala Kantilal [1991] 190 ITR 56, wherein it has been held that expenditure incurred in removing the encumbrances was deductible. The Tribunal found that there was an acrimonious dispute between the father and the son and the said amount was paid to effect the transfer. Hence, the Tribunal ordered Rs. 8 lakhs to be deductible. We see no reason to interfere with this finding of fact.

3. In this appeal no substantial question of law arises. Hence, the appeal is rejected.