

Sum paid to clear mortgage can't be held as exp. incurred in connection with transfer under sec. 48

Summary – The High Court of Madras in a recent case of Sri Kanniah Photo Studio., (the Assessee) held that Amount spent a discharge of mortgage created by assessee after acquiring property, would not be deductible as expense under section 48(1)(i)

Facts

- During the year relevant to the assessment year 2005-06, the assessee sold land along with building. The assessee had taken mortgage loan on the said property with a bank. For clearing the mortgage, the assessee had made a one time settlement with the bank in respect of the aforesaid loan and paid certain amount to the bank. While computing the capital gain, the said amount was claimed as expenses by the assessee under section 48(1)(i).
- The Assessing Officer, however, held that the loan in question had been obtained by mortgaging the property long-time after acquiring the same and therefore, the same was not covered under section 48(1)(i) and therefore, disallowed the assessee's claim for the purpose of computing the capital gains.
- On appeal, Commissioner (Appeals) relying upon the judgment of the Calcutta High Court in the case of *Gopee Nath Paul & Sons v. Dy. CIT* [\[2005\] 278 ITR 240/147 Taxman 629](#) allowed the assessee's claim.
- On appeal by the revenue, the Tribunal relying on the decision in the case of *CIT v. N. Vajrapani Naidu* [\[2000\] 241 ITR 560/\[1999\] 107 Taxman 277 \(Mad.\)](#) allowed the appeal.
- On appeal by the assessee:

Held

- On a careful reading of section 48, it is evident that section 48 provides that income chargeable under capital gains shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset such amounts, viz., expenses, incurred wholly and exclusively in connection with such transfer. The object behind such a provision is mainly for excluding those expenses incurred wholly or exclusively in connection with the transfer of the property.
- The facts in the instant case reveal that for further development of the property, loan had been obtained by the appellant/assessee from the bank and for the purpose of clearing the mortgage loan, the appellant/assessee had sold the property and effect the one-time settlement with the bank. The Assessing Officer had held that since the mortgage loan had been long-time after the acquisition of the property, the same would not stand covered under section 48(1). That being the case, it does not appear that the explanation relating to discharge of the mortgage to the bank, as

submitted by the assessee, can be termed as expenditure, as the property had been acquired long-time before taking the mortgage loan from the bank.

- No reason was found to depart from the finding of this Court in *N. Vajrapani Naidu's case (supra)*. In the instant case, mortgage has been created by the present appellant/assessee and consequent to the sale, the assessee has discharged the mortgage to bank. As the burden had been created for his own benefit by offering the property as security to bank, the amount spent for discharging that burden whether prior to sale, or at the time of sale, by way of one-time settlement to the bank, cannot be regarded as expenditure wholly and exclusively in connection with the transfer. In the instant case, the discharge was in the course of sale. It is found that the payment of the outstanding amount in discharge of mortgage by the vendor, viz., appellant herein, cannot partake the character of an expenditure. It is not a case where the assessee had discharged the mortgage created at the time of acquisition of the property by the instant appellant/assessee, to make a distinction otherwise.
- The observation made in the case of *Gopee Nath Paul & Sons (supra)* supports the view of this Court that where the discharge of mortgage created by the assessee for acquiring the property, the same would not be deductible. The abovesaid decision is clearly distinguishable on facts and the observation in said decision further strengthens the view of this Court in regard to the amounts which are to be deductible as expenditure.
- In the light of the decisions as quoted above, this Court is persuaded to follow the reasoning of this Court in *N. Vajrapani Naidu's case (supra)*, which is squarely applicable to the facts of the instant case and, therefore, there is no hesitation to accept the view of this Court in the case of *N. Vajrapani Naidu's case (supra)*.