

Sum paid to sisters to acquire absolute title to property held as exp. in connection with transfer

Summary – The High Court of Bombay in a recent case of Kamlakar Moghe, (the Assessee) held that where assessee received a property with clause in his mother's will providing overriding title in favour of his three sisters, payment made by assessee to his sisters for acquiring absolute title in property would be reduced as expenditure while computing capital gain on sale of said property

Facts

- The assessee's mother 'K' executed a will by which she divided her residential bungalow into two parts, out of which ground floor was given to assessee and first floor was given to assessee's brother 'P'. 'P' expired. He made a will and bequeathed his share in name of his three sisters. The assessee then purchased construction of first floor for certain amount.
- The assessee's mother had also provided in will a share for her three daughters if assessee or his brother did not have a son alive at the relevant time. Admittedly, assessee had only one daughter and P's son had expired. Thus, the assessee received property with clause in a will providing overriding title in favour of his three sisters. In that situation, assessee decided to pay Rs. 15 lakhs each to his sisters and Rs. 5 lakhs to his three nieces so that in future they should not claim any right in the property. A family settlement was accordingly reduced into writing. The assessee, after sale of said property, claimed said amount under section 49 and reduced it while working out capital gains.
- The Assessing Officer did not accept the claim of assessee.
- On appeal, the Commissioner (Appeals) did not accept the assessee's the claim towards amount of Rs. 15 lakhs paid to three nieces but allowed deduction of amount of Rs. 45 lakhs paid to three sisters.
- The Tribunal upheld the order of the Commissioner (Appeals).
- On appeal before the High Court:

Held

- The assessee's mother 'K' by her Will had provided an overriding title in favour of her daughters, *i.e.*, three sisters of the assessee. The owner of first portion 'P' had a son who expired in 1985, *i.e.* before death of 'K'. Thus, on the date of death of 'K', 'P' had only three daughters surviving him. 'P' in turn made a will and bequeathed his share in the name of his sisters. The assessee had only one daughter.
- This situation, therefore shows that after expiry of 'P' on 20-3-1996, the assessee and his three daughters were faced in a peculiar position. They resolved the situation and a family settlement was reduced into writing. It was agreed that at the time of sale, each sister shall be given Rs. 15 lakhs and each niece shall be given Rs. Five lakhs. Accordingly, when the property was sold on 7-7-2006, this family settlement has been given effect to. It is, therefore, obvious that in the absence of such

family settlement and payment, the sale of property by the assessee could not have materialized. The Commissioner (Appeals) in the appeal filed by the assessee has not accepted payment of Rs. Five lakhs each given to three nieces and that finding has been maintained even by the Tribunal. The assessee has not questioned it in further appeal. As such, the only question is whether amount of Rs. 45 lakhs paid to his sisters has been rightly accepted as expenditure in connection with transfer of property. The sisters had a title in property and without their co-operation there could not have been any sale. In this situation, there is no error in concurrent findings reached by the Commissioner (Appeals) as also by the Tribunal.