

No tax on alimony received from ex-husband

Summary – The High Court of Calcutta in a recent case of Shrimati Roma Sengupta., (the Assessee) held that Amount realised by assessee from sale of a property received as alimony from her husband in terms of decree of divorce, was to be regarded as capital receipt not liable to tax

Facts

- The assessee married to 'D' in the year 1966. The marriage was subsequently dissolved by a decree of divorce. The assessee filed her return disclosing long-term capital gain consequent to sale of 50 per cent of her share in the matrimonial house. She sought to deduct 50 per cent of cost of acquisition contending that matrimonial house was acquired using the sale proceeds of a flat in which she was a co-owner having 50 per cent share therein.
- The Assessing Officer deputed an Inspector to verify the claims. On the basis of report of the Inspector, the Assessing Officer opined that flat was owned exclusively by the former husband of the assessee and the sale proceeds from the said property were utilized to purchase the matrimonial house. He thus rejected assessee's claim for deduction of cost of acquisition.
- On appeal, the Commissioner (Appeals) allowed the assessee's appeal and directed the Assessing Officer to compute the long term capital gain as per the computation of the appellant and also to allow the benefit of deduction under section 54.
- On further appeal, the Tribunal rejected the contention of the assessee as regards computation of capital gains on the basis that 50 per cent of the sale proceeds were received by the assessee on account of alimony from her former husband.
- The assessee thus filed instant appeal raising a new plea that lump sum alimony being a capital receipt, was not liable to tax.

Held

- The Tribunal has categorically held that it was on account of alimony that the husband mutually agreed to part with 50% as is noted in the decree of divorce.
- The revenue raised an objection that assessee could not make out a new case. The said objection could not be accepted. It was open to the assessee to contend that the receipt was capital in nature and therefore not taxable.
- When the revenue did not prefer any appeal against the finding of the Tribunal that the payment was 'on account of alimony', the revenue must be deemed to have been satisfied by such finding.
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- In view of above, it is to be held that amount received by the assessee was a capital receipt and, hence, not taxable.