

Sum paid to brothers for vacating house held as cost of improvement of house

Summary – The Ahmedabad ITAT in a recent case of Nanubhai Keshavlal Chokshi HUF., (the Assessee) held that Payment made by assessee to brothers who were living with him, for vacating house to be sold would be considered as an expenditure incurred for improvement of asset or title and would be deducted from long term capital gain on sale of said house

Facts

- The assessee had shown income from long-term capital gain from sale of property.
- The assessee claimed deduction of certain amount paid to their brothers for vacating the house as expenditure incurred for improvement of asset.
- The Assessing Officer declined the claimed deduction on the ground that the assessee were the sole occupant of their property and the assessee's brothers were neither living in capacity of a tenant nor were paying any rent.
- On appeal, the Commissioner (Appeals) affirmed the findings of the Assessing Officer.
- On further appeal:

Held

- The assessee's brothers were residing in the house owned by them and while selling the house in order to get vacant possession, payment of Rs. 21 lakhs was made by Nanubhai Keshavlal Chokshi, HUF in his case, and Rs. 31 lakhs in the case of Lallubhai Keshavlal Chokshi, HUF. As far as payment part is concerned, there is no dispute. The payment was made through account payee cheques. Both brothers have confirmed receipt of money. They had also filed affidavit to this effect. Their statement was also recorded. They were residing in the house, but not making payment of any rent. On an analysis of the record, it was found that the revenue authority had approached to the controversy in strictly mechanical way. Whereas in the present appeals, situation was required to be appreciated, keeping in mind social circumstances and the relationship of the brothers. What was their settlement while residing together? What was feeling of elder brother towards their younger brother, when they displaced them from a property where they were residing for last more than 24 years? Had the controversy been appreciated in a mechanical manner, and if both the brothers, who were residing in the house refused to vacate the house, then, what would be the situation before these assessee. They have to file a suit for possession that might be decided against, and young brother ejected from the premises, but that would consume time in our judicial process of at least more than ten to fifteen years. The prospective buyers may not be available in such circumstances.

Shri Laxmanbhai K. Chokshi as well as Jagdishbhai K. Chokshi were candid in their statement that they were residing in these houses along with their brothers. Laxmanbhai K. Chokshi, though had not been paying any rent, but he was paying electricity bills. It could be said that the payments were made for improvement of title of the property and they are entitled to claim deduction of cost of payment.