

(1985) 11 KAR CK 0013

In the Karnataka High Court

Case No : IT Reference No's. 63 and 64 of 1976 & Income Tax R.Cs. No's. 63 and 64 of 1976

Additional Commissioner of Income Tax

APPELLANT

Vs

Chikkaveerayya Lingaiah

RESPONDENT

Date of Decision : 05-11-1985

Acts Referred:

Income Tax Act, 1961 — Section 256 (2)

Citation : (1987) 164 ITR 41 : (1986) 24 TAXMAN 197

Hon'ble Judges : K. Jagannatha Shetty, Acting C.J.; S.A. Hakeem, J; Mohammad Sharif, J

Bench : Full Bench

Advocate : G. Sarangan, for the Appellant; S. Rajendra Babu, for the Respondent

Judgement

K. Jagannatha Shetty, Actg. C.J.

1. The common question referred u/s 256(2) of the Income Tax Act, 1961 ("the Act"), is :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the profits on sale of building sites in Survey Nos. 70/1/A and 73/A/1 were not profits derived from an adventure in the nature of trade and, therefore, not taxable as business profits for the assessment year ?"

2. I.T.R.C. No. 63 of 1976 pertains to the assessment year 1964-65 and I.T.R.C. No. 64 of 1976 relates to the assessment year 1965-66.

3. The Income Tax Appellate Tribunal ("the Tribunal") has disposed of the matter by a common order dated June 26, 1971, and the facts that we could gather from the statement of the case are these :

Chikkaveerayya Lingaiah, the assessee, obtained a permanent lease in respect of two adjacent lands, Survey No. 70/1/A measuring 11 acres 02 quotas and Survey No. 73/A/1 measuring 19 acres 05 quotas. Survey No. 70/1/A was taken

on lease on April 3, 1947, and Survey No. 73/A/1 was secured on July 19, 1948. On February 2, 1949, the assessee entered into an agreement with the promoters of a company called Jagadeva Business Corporation, Hubli, in regard to 10 acres of land in Survey No. 70/1/A. Earlier to that on October 18, 1948, the assessee applied for conversion of the lands for non-agricultural purposes, but due to certain subsequent developments, that application was not pressed. The assessee, however, renewed his request in 1957 and obtained permission for conversion in 1961. But his agreement entered into with Jagadeva Business Corporation ran into rough weather. There was misunderstanding between the parties which led to the filing of Special Suit No. 9 of 1963 on the file of the Civil Judge, Senior Division, Hubli, against the Corporation for the recovery of possession of the land leased and for other reliefs. The suit appears to have been compromised.

4. During the previous year relevant to the assessment year 1964-65, the assessee sold certain plots made in the portions of the lands acquired by him through the permanent lease deeds referred to above. The assessee filed a return of income admitting an income of Rs. 1,902 under property and dividends for that assessment year. He had also shown in Part-F of the return, the realisation amounts of Rs. 35,000 and Rs. 6,685 on the sale of plots and claimed that the sums realised did not form business income for the reason that the sale transactions were not an adventure in the nature of trade. The Income Tax Officer, after examining all the relevant material, did not agree with the assessee's contention and he computed income from the sale of sites treating the assessee's transaction as an adventure in the nature of trade.

5. Aggrieved by the order of the Income Tax Officer, the assessee went in appeal before the Appellate Assistant Commissioner who agreed with the Income Tax Officer in bringing to tax the sale proceeds as business profits on the ground that the assessee's intention at the time of acquisition of the leasehold rights was to sell them and make profit. However, for the assessment year 1964-65, the Appellate Assistant Commissioner directed the Income Tax Officer to reduce the business profit on sale of sites by an amount equal to stamp duty, i.e., Rs. 1,597, and registration fees of Rs. 200.

6. Aggrieved by the order of the Appellate Assistant Commissioner, the assessee appealed to the Income Tax Appellate Tribunal. The Tribunal accepted the appeals holding that the transactions in question were not adventures in the nature of trade.

7. Before the Tribunal, the Department relied upon an affidavit filed by the assessee in this court in Writ Petition No. 1206 of 1965 wherein he has challenged the legality of property tax levied on the lands by the Hubli-Dharwar Municipal Corporation. The statements contained in that affidavit are indeed against the plea put forward by the assessee that he never intended to dispose of the lands and make profit. The Tribunal, however, observed that the statements in that affidavit could not be held against the assessee since they

were made to take a particular stand in order to get over the property tax liability. As to the conversion of lands into non-agricultural purposes - the circumstance on which the Department also relied upon - the Tribunal observed that no such permission for conversion was obtained when the assessee entered into an agreement with Jagadeva Business Corporation and the fact that the said business corporation had constructed rooms on a portion of the land would indicate that the assessee's intention was not to embark on an adventure in the nature of trade. The Tribunal also felt that it could not ignore the fact that the assessee was only an agriculturist and he did not effect any transaction of sale of property before he acquired the leasehold rights or thereafter.

8. We have to decide the nature of the transaction by which the assessee acquired the permanent leasehold rights of the lands, whether it was an adventure in the nature of trade or not. The leading case of the Supreme Court in point is *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, , in which Gajendragadkar J., as he then was, said at page 609 :

"It is impossible to evolve any formula which can be applied in determining the character of isolated transactions which come before the courts in tax proceedings. It would besides be inexpedient to make any attempt to evolve such a rule or formula. Generally speaking, it would not be difficult to decide whether a given transaction is an adventure in the nature of trade or not. It is the cases on the border line that cause difficulty."

9. The learned judge then continued at page 610 :

"In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction; and so, though we may attempt to derive some assistance from decisions bearing on this point, we cannot seek to deduce any rule from them and mechanically apply it to the facts before us."

10. In *Raja J. Rameshwar Rao Vs. Commissioner of Income Tax, Hyderabad*, Hidayatullah J., as he then was, pointedly observed at page 181 :

"No doubt, this was only a single venture; but even a single venture may be regarded as in the nature of trade or business. When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it but in parcels, he is dealing with land as his stock-in-trade; he is carrying on business and making a profit..."

11. In *Janki Ram Bahadur Ram Vs. Commissioner of Income Tax, Calcutta*, , the Supreme Court has explained further (at p. 25) :

"A transaction of purchase of land cannot be assumed without more to be a venture in the nature of trade. However, the magnitude of the transaction of purchase, the nature of the commodity, subsequent dealings and the manner of

disposal may be such that the transaction may be stamped with the character of a trading venture."

12. This court has had occasion to apply the aforesaid principles to cases of sale of lands in (i) Commissioner of Income Tax, Karnataka Vs. R. Ramaiah and Others, (ii) Commissioner of Income Tax Vs. B. Narasimha Reddy, and (iii) P. Kannan Vs. Commissioner of Income Tax, . In all these cases, this court held that if an assessee purchased land, converted the same into house sites and sold the same for attractive prices, then his transaction may be stamped with the character of a trading venture.

13. The case on hand appears to be no exception to the above rule. One need not delve deep into the matter to find out the real intention of the assessee at the time of acquiring the leasehold rights of the lands. The assessee himself has revealed his case and made his intention clear in his affidavit filed in Writ Petition No. 1206 of 1965. He filed that writ petition against the Hubli-Dharwar Corporation challenging the validity of the levy of property tax on the vacant lands with which we are concerned in these references. In that affidavit, the assessee has stated in para. 1 :

"I am a permanent resident of Hubli City and I own amongst others a large number of building sites which are entirely vacant and unused for any purpose whatsoever. In that way, I own plots Nos. 1 to 77 in S. No. 70/ A and 73/1A in M. Thimasagar of Hubli City. These were acquired by me and made out into plots with the specific object and purpose of selling them as building sites and I have kept them vacant all along for that purpose since 1961 when I formed them..."

14. He went on to state in para. 8 of the affidavit :

"I have formed this area into various plots so as to eventually sell them away as building sites and my immediate purpose and object is to keep these sites always vacant so that I may readily dispose of them to any intending buyer. It is not to my purpose nor suitable for this object to devote any of these sites even temporarily for any use because the tenancy laws would make it very difficult, if not altogether impossible, for me to obtain vacant possession and deliver the same to intending buyers. Therefore, it is obvious that these sites have not been up to this point of time devoted for any purpose, use or profession nor did I ever intend to so use them. It is only when I intend to use any of these vacant sites for letting for any trade, profession or business either by myself or through any other person apply for such permission or licence to carry on the particular trade or profession on the site that the provisions of law can be attracted to it with respect to imposition of property tax and not otherwise."

15. The Tribunal though it noticed these admissions of the assessee did not, however, place any reliance on the ground that the assessee made those statements in the context of imposition of property tax. It is true that any admission made by the assessee in any proceedings can be properly explained. But the assessee cannot get away with the clear-cut admission made by him by

merely stating that those admissions were made only to get rid of the property tax demand. It was not his case that he was misled or forced to make such statements by the circumstances then prevailing. He was challenging the validity of the levy of property tax imposed by the Corporation and he wanted to avoid that tax by stating that he acquired the leasehold rights for the purpose of converting the lands into plots with the specific object and purpose of selling them as building sites. These admissions cannot be brushed aside so lightly as done by the Tribunal.

16. Mr. Babu, learned counsel for the assessee, however, relied upon some circumstances in support of the conclusion reached by the Tribunal. He first relied upon the agreement with Jagadeva Business Corporation. But that agreement was only in regard to a portion of the land. Even that agreement did not last long. The assessee had to institute a suit which ultimately ended in a compromise. At any rate, we are not concerned in these cases with the land under the occupation of the Jagadeva Business Corporation. Counsel next submitted that the fact that the assessee was an agriculturist and the lands acquired by him were agricultural lands must weigh in favour of the contention of the assessee. It is true that the assessee was an agriculturist, but he did not use the land for agricultural operations. He obtained the leasehold rights in the year 1947 and kept the land vacant and uncultivated for over a decade. He was trying to get permission for conversion of the land into non-agricultural purposes within a couple of years of acquiring the leasehold rights. He first applied for such permission in 1947. Again he renewed it in 1957 and obtained the permission in 1961. In the interregnum, he did not cultivate the land. He, on the contrary, entered into an agreement with Jagadeva Business Corporation for construction of a building by leasing a portion thereof. The fact that the assessee did not cultivate the land for a decade clearly indicates that he wanted to preserve the land for the specific object and purpose of selling it as building sites. That was also his case as set out in the affidavit referred to above.

17. There is yet another circumstance in the case. The land is located along the National Highway of the Poona-Bangalore trunk road. The Income Tax Officer in the assessment order has vividly described the nature of the land and its location. It is close to an Engineering College, the Commerce College and the Arts College, Hubli. It is in the neighbourhood of the new Cotton Market, Agricultural Produce Marketing Committee and the Government Industrial and Technical School. It is within the Corporation limits of Hubli-Dharwar Corporation and it has special adaptability for building sites.

18. Quite naturally, regard being had to the nature and location of the land, the assessee wanted to convert it into building sites for the purpose of making profit, and his dealings with the land must, therefore, be construed as carrying on business and making profit. The Tribunal, in our opinion, was in error in holding to the contrary.

19. In the result and for the reasons stated above, we answer the question in

each of the references in the negative and in favour of the Revenue.

20. In the circumstances, however, we make no order as to costs.