

(1963) 04 CAL CK 0014

In the Calcutta High Court

Case No : Civil Rule No's. 169 (w) , 287 (w) , 369 (w) , 370 (w) , 695 (w) , 880 (w) , 890 (w) to 892 (w) of 1961 and 41 (w) , 42 (w) , 78 (w) , 194 (w) and 195 (w) of 1962

Bijoy Krishna Dey. and Others

APPELLANT

Vs

Sub-Divisional Land Reforms Officer

RESPONDENT

Date of Decision : 23-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 31A

West Bengal Estates Acquisition Act, 1953 — Section 10(2), 3, 4, 49, 5(c)

Citation : 67 CWN 802

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Swadesh Bhusan Bhunia, for the Appellant; J. Majumdar, P.K. Banerjee, S.C. Bose, S.C. Das, N.C. Chakrabarti, Susil Kumar Biswas, S.K. Banerjee, M.M. Dutta and M.C. Chakravarti, for the Respondent

Judgement

SINHA J. - This is a reference u/s 66(2) of the Indian Income Tax Act. The facts are shortly as follows : The assessee in this case is Messrs. Janki Ram Bahadur Ram, having the status of a Hindu undivided family. It is a dealer for the last 30 or 40 years in scrap iron and hardware. It buys from the local market all kinds of scrap iron as also iron goods from auctions, railways and other companies with the sole purpose of selling the same at a profit. Admittedly, it did not deal in jute. Messrs. Hoare Miller & Co. Ltd. was the owner of a jute press situated at Baranagore known as the Homer Jute Press. In 1941, the press was leased out to one Ram Lal Bajoria for a period of ten months. The terms of the lease expired on the 9th October, 1941, but the lessee did not deliver vacant possession and Messrs. Miller & Co. Ltd. filed an ejectment suit. On or about the 31st October, 1942, while the suit was pending, the assessee agreed with Messrs. Hoare Miller & Co. Ltd. to purchase the said jute press together with the lands and building contained in three schedules annexed to the agreement, for a sum of Rs. 2,45,000 free from incumbrance but subject to the litigation pending. On 13th

November, 1942, it was agreed that the previous payment of Rs. 2,45,000 may be appropriated by Messrs. Hoare Miller & Co. Ltd., although the conveyance had not yet been executed. On the 14th November, 1942, the possession was made over to the assessee so far as was possible. On the 26th February, 1943, the conveyance was executed by Messrs. Hoare Miller & Co. Ltd. in favour of the assessee. At this stage, it will be necessary to consider certain features of the transaction. Messrs. Hoare Miller & Co. Ltd. had sold the jute press at Baranagore to the assessee, known as the Homer Jute Press. The property conveyed was described in three schedules. The first schedule consisted of land and structures including office and residential quarters, consisting of a press house and cotton ginning factory and a two-storeyed brick build godown, as also certain corrugated iron-shed godown, etc. In this case, the area of the land was three bighas eight cottahs and four chatacks. The second schedule consisted of certain leasehold property, being Government khas-mahal lands, with a corrugated iron-shed godown on steel frame. In this case, the leasehold interest was not conveyed, but merely the godown, etc., presumably for being dismantled and removed. In this case, the area of the land was II cottahs 33 chatacks and 36 sq. ft. The third schedule consisted of lands in respect of which Messrs. Hoare Miller & Co. Ltd. were the licensees. In this case also, there was no attempt to have the licence transferred. What was purchased was a two-storeyed corrugated iron-shed godown on steel frame. In this case, the land measured 1 bigha 5 cottahs and 5 chatacks. Presumably, therefore, the intention was to dismantle the godown, etc., and remove the same. Meanwhile, R. P. Saha, a well-known businessmen of Calcutta, came to know of this jute press, etc., known as the "Homer Jute Press" and approached Messrs. Hoare Miller & Co. Ltd. for buying the same. Actually, it was H. L. Roy, his manager, that did so. He was informed that the jute press had already been sold to Janki Ram Bahadur Ram who is the karta of the said Hindu joint family. According to the evidence of Roy, he went to Janki Ram and negotiations were started for purchase. Eventually, the assessee agreed to sell the properties purchased by it as aforesaid from Messrs. Hoare Miller & Co. Ltd. to R. P. Saha. The agreement was executed on the 12th June, 1943, and on the 10th August, 1943, the assessee had its name substituted in the ejectment suit against Bajoria. On the 30th September, 1943, a conveyance was executed on behalf of the assessee by the members of the Hindu joint family in favour of R. P. Saha. It appears from the conveyance, a copy whereof is annexure "B" to the statement of case, that the purchase price was settled at Rs. 4,73,364-3-6, out of which Rs. 3,23,364-3-6 was settled as the consideration for the property in schedule 1. The remaining sum of Rs. 1,50,000 was the agreed price for the "joint girdars, fabricated steel C. I. roofs, bolts, nut and bolts and ceiling planks" being portions of the materials of the godowns and structures dismantled by the vendor. It has been found as a fact that the assessee had carried out some petty repairs to the buildings and had put the machinery in running condition, although it is not at all clear how he did so, since the possession was with Bajoria. In fact, nothing is said about what happened to the ejectment suit. However, it appears that R. P. Saha took

possession and ran the jute press for a few months, after which Government requisitioned the same. In 1944, the property was released from requisition. During 1944-48 R. P. Saha ran the jute press, but shortly after partition, removed the entire machinery to Pakistan where they were installed at Chandpur in East Pakistan.

As a result of this transaction, the assessee made profit of Rs. 2,24,864 during the assessment year 1944-45. The question is whether this is to be considered as a capital gain or as an adventure in the nature of trade, and as such assessable to Income Tax. The Income Tax Officer held that the assessee had purchased the jute press along with the land and buildings, as business transaction, for the sole purpose of selling them at a profit, and as such the surplus was taxable as business income. Against this order, the assessee appealed to the Appellate Assistant Commissioner, who upheld the same and this was confirmed in further appeal before the Appellate Tribunal. The question that has been referred to us is as follows :

"Whether, on the facts and in circumstances of the case, the Tribunal was right in holding that the surplus of Rs. 2,35,211 received by the assessee as a result of the sale of the jute press referred to in the appellate order arose out of an adventure in the nature of trade and was, therefore, rightly assessed to tax :"

Firstly, we have to consider the definition of the word "business" in section 2(4) of the said Act. According to that definition, it includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce and manufacture. In this case what has to be considered is whether the surplus which has been assessed to Income Tax can be considered to be the outcome of an adventure in the nature of trade. The question whether the particular income is in the nature of an accrual of capital or is the outcome of an adventure in the nature of trade is one of some difficulty. It will be necessary to consider certain authorities for that purpose. The first decision is one of the Supreme Court - G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax, . In that case, the assessee was a firm acting as managing agents of the Janardana Mills Ltd., Coimbatore. From time to time, it purchased certain plots of lands for a total consideration of Rs. 8,713 which were contiguous or adjacent to the said mill. For several years these lands were left without any effort to cultivate them or erect any structures thereon. Thereafter, in 1947, the assessee sold the lands to the said mill in two lot for a total consideration of Rs. 52,600. The question was whether the sum of Rs. 43,887, being the excess realised by the assessee over the purchase price, was assessable to Income Tax. The assessee contended that the plots were acquired for investment and, therefore, the increase in price was accrual of capital and not business income. This contention was, however, rejected. The Appellate Tribunal held that the assessee was in a position to influence the decision of the managed company to purchase the properties, and the plots were purchased by the assessee wholly and solely with the idea of selling them at a profit to the company. Therefore, it was not capital accretion

but the outcome of an adventure in the nature of trade and was, therefore, taxable. On a reference, the High Court held that the transaction was an adventure in the nature of trade and that the department was justified in taxing the amount. Thereupon, an appeal was taken to the Supreme Court. It was held on the facts that the Appellate Tribunal was right in inferring that the appellant knew that it would be possible to sell the lands to the managed company, whenever it thought it profitable so to do; that the appellant purchased four plots of lands with the sole intention of selling them to the mill at a profit, which intention raised the strong presumption in favour of the view taken by the Tribunal, and that the High Court was right in holding that the transaction in question was an adventure in the nature of trade. Gajendragadkar J. said as follows :

"As we have already observed, it is impossible to evolve any formula which can be applied in determining the character of isolated transaction 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."

The learned judge has laid down certain tests which may be summarised as follows :

(1) If a person invests money in land, intending to hold it, enjoys its income for some time, and then sells it at a profit, it would be a clear case of capital accretion and not profit derived from an adventure in the nature of trade.

(2) Cases of realisation of investments consisting of purchase and resale, though profitable, are clearly outside the domain of adventures in the nature of trade.

(3) In deciding the character of such transactions, the following questions may be asked. Was the purchaser a trader and were the purchase of commodity and its resale allied to his usual trade or business or incidental to it ? Affirmative answers to these questions would render it as business income.

(4) Next it may be questioned as to what is the nature of the commodity purchased and resold and in what quantity was it purchased and resold ? If the commodity purchased is generally the subject-matter of trade, and if it is purchased in very large quantities, it would tend to eliminate the possibility of investment for personal use, possession or enjoyment.

(5) The next question to be asked is - Did the purchaser by any act subsequent to the purchase, improve the quality of the commodity purchased, and thereby make it more readily resalable ? What were the incidents associated with the purchase and resale ? Were they similar to the operations usually associated with the trade or business ? If the answers are in the affirmative, it points to the income being business income.

(6) The next question to be asked is - Were these operations similar to the

operations usually associated with trade or business ? Are the transactions of purchase and sale repeated ? An affirmative answer would tend to establish that the income was business income.

(7) The next question to be asked is - In regard to the purchase of the commodity and its subsequent possession by the purchaser, does the element of pride of possession come into the picture ? A person may purchase a piece of art, hold it for some time and if a profitable offer is received may sell it. During the time that the purchaser had its possession, he may be able to claim pride of possession and aesthetic satisfaction; and if such a claim is upheld, that would be a factor against the contention that the transaction was an adventure in the nature of trade.

(8) There are a number of judicial decisions which deal with the character of transactions alleged to be in the nature of trade. In considering these decisions, it would be necessary to remember that they do not purport to lay down any general or universal test. The presence of all the relevant circumstances mentioned in any of them may help the court to draw a similar inference; but it is not a matter merely of counting the number of facts and circumstances pro and con : what is important to consider is their distinctive character. 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 mechanically apply it to the facts before us.

(9) Another test which is sometimes applied is to ask the question - Was the purchase made with the intention to resell it at a profit ? Some judicial decisions apply the test of the existence of an initial intention to the resale, in distinguishing adventures in the nature of trade from transactions of investment. But in such cases, a distinction must be made between the initial intention to the resale at a profit which is present but not the dominant or sole intention. It may be that the purchaser may be willing and may intend to sell the property at a profit, but determines to hold and enjoy it, if a really high price is not offered. In such a case, there is an element of an intention to hold the property. On the other hand, there can be cases where the purchase is made solely and exclusively with the intention to resell at a profit, without any intention of holding the property or enjoying the user of it. In each case, the initial intention is, no doubt, a relevant factor, and unless it is off-set by the presence of other factors, it would raise a strong presumption that the transaction is in the nature of trade. But the presumption is not conclusive and it is conceivable that, on considering all the facts and circumstances in the case, the court may, despite the said intention, be inclined to hold that the transaction was not an adventure in the nature of trade.

(10) In reality, the position is that the decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule, principle or test and must in every case depend upon all relevant

facts and circumstances.

In view of this enunciation of the law, it is really not necessary to flounder amongst case laws. All we have to do is to apply the tests to the facts of this particular case. I must, however, deal with a few cases, since strong reliance has been placed upon them by the assessee. The first case is a decision of House of Lords, *Leeming v. Jones* [(1930) 15 Tax. Cas. 333.]. The facts in that case were as follows : The appellant was a member of a syndicate of four persons formed to acquire an option over a rubber estate in the Federated Malay States. This was done with a view to resell the same at a profit. The option was secured, but the estate was considered too small for the purpose. An option was, therefore, obtained over another adjoining estate and it was decided to resell the two estates together to a public company to be formed for the purpose. The company was formed and the sale effected. The syndicate made a profit in the transaction. The appellant was assessed upon his share of profit. It was contended that this profit was not assessable as it was not an adventure in the nature of trade. The General Commissioners found that the transaction in question was not a concern in the nature of trade and it was held that there was no liability to assessment. Lord Buckmaster said as follows :

"This brings the argument back to the original position. Can the profits made in this case be described as income ? Were the respondent a company promoter or were his business associated with purchase and sale of estates, wholly different considerations would apply, but this is negatived : the transaction in this case stands isolated and alone. It is to my mind, in the circumstances, purely an affair of capital. I can see no difference between it and what might have happened had the respondent bought shares in two companies which were going to be amalgamated, and then sold equivalent shares in the amalgamated company at a profit; an accretion to capital does not become income merely because the original capital was invested in the hope and expectation that it would rise in value; if it does so rise, its realisation does not make it income.

The learned judge then proceeded to quote Lord Warrington in *Cooper v. Stubbs* [[1925] 2 K. B. 753.], where he had said as follows :

"The question therefore is simply this, were these dealings and transactions entered into with a view to producing, in the result, income or revenue for the person who entered into them ? If they were, then in my opinion profits arising from them were annual gains or profits within the meaning of paragraph 1(b) of Schedule D. On the findings of the Commissioners themselves they were contracts entered into with a view to making a profit on a rise and fall, as the case might be, in the market price of the contracts. They extended over a considerable number of years. There were large numbers of transactions in each of those years, from which in some years the appellant derived considerable revenue.... profits made by these transactions are annual profits or gains, and must be assessable to Income Tax."

Lord Buckmaster pointed out that the *Leeming v. Jones* [(1930) 15 Tax. Cas. 333.], none of the conditions above mentioned by Lord Warrington existed. The next case cited is *Saroj Kumar Mazumdar Vs. The Commissioner of Income Tax, West Bengal, Calcutta*, . The facts in that case were as follows : The appellant was engaged in various types of business activities, being a shareholder and director or managing director of several limited liability concerns and was also a partner in the firm known as "Pioneer Engineering Works". The Hindustan Co-operative Insurance Society Limited of Calcutta, acquired a block of about 578 bighas of land to the south of Tollys Nullah (now known as New Alipore). The society developed the land and was selling the same for residential purposes. The assessee agreed to purchase a plot of about 51 cottahs of land and paid to the society sum of Rs. 32,748, being 25 per cent. of the estimated total price. The assessee purchased a plot of land with a view to building a residential house for himself and for constructing a workshop, in connection with his business activities. At the end of the Second World War, the assessee's construction activities began to decline. Further, the land was requisitioned by Government and there was no immediate prospect of its derequisition. The assessee sold and transferred to Rani Yuddharajya Devi of Nepal the said plot of land and thereby received from the Rani a sum of Rs. 74,000 and odd, in excess of the amount paid by him to the society. The department assessed him for Income Tax upon this amount, on the basis that this was an adventure in the nature of trade. The Appellate Assistant Commissioner did not agree with the finding and reversed the same. The Appellate Tribunal, however, on appeal upheld the assessment. It held that the assessee was keen businessman and, therefore, this transaction was an adventure in the nature of trade. From this decision the assessee went up to the Supreme Court. Sinha J. (as he then was) said as follows :

"Each case must be determined on the total impression created on the mind of the court by all the facts and circumstances disclosed in that particular case. Hence, no decided case can, strictly speaking, be a precedent which could govern the decision of a later case, involving a similar question. Those decision can be used only by way of illustrations of the different view-points which have a bearing on the decision of the case in hand. It has also not been disputed that in a case where a transaction under examination is not in the line of the business of the assessee, and is an isolated or a single instance of a transaction like that, the burden lies on the revenue to bring the case within the words of the statute, namely, that it was an adventure in the nature of trade. That the onus is on the department has been clearly laid down by Lord Carmont in the case of *Commissioner of Inland Revenue v. Reinhold* [(1953) 34 Tax Cas. 389,393.]."

In *Reinholds* case [(1953) 34 Tax Cas. 389, 393.], the assessee was a director of a company carrying on the business of warehouseman. He had bought four houses in January, 1945, and sold them at profit in December, 1947. He admitted that he had bought the property with a view to resell it and had instructed his agent to sell whenever a suitable purchaser was forthcoming. The houses were sold and he enjoyed the profit. This was assessed to Income Tax, but it was held

that it was not so assessable. The assessee was not a property agent and his business was not in any way associated with the purchase and sale of estates. It was an isolated transaction, even though the assessee had purchased a hotel and sold it again ten years previously. In the case of *Saroj Kumar Mazumdar Vs. The Commissioner of Income Tax, West Bengal, Calcutta*, the learned judge held that there was no clear evidence in support of the inference of the Appellate Tribunal that the land was purchased with the sole intention of selling it later at a profit. It was pointed out that even a single transaction of purchase and sale may amount to an adventure in the nature of trade (see *Rutledge v. Commissioners of Inland Revenue* [(1929) 14 Tax. Cas. 490.]). Speaking of the case, the learned judge said as follows :

"The court rightly pointed out that the question was not whether it was a trade but whether it was a venture in the nature of trade. Hence, though the single transaction of purchase and sale may not have amounted to what is ordinarily understood by trade in the sense of a series of transactions, it was certainly a venture in the nature of trade, because from the very beginning, the intention was manifest that the purchase was made not with a view to utilising the commodity for the personal use of the purchaser, but with a view to making profit by a re-sale, which was apparent from the very nature and magnitude of the commodity purchased."

The next case to be cited in a decision of the Madras High Court in *Ajax Products Ltd. Vs. Commissioner of Income Tax, Madras*. The assessee was a public company which was formed with the object of manufacturing abrasives and steel products. In April, 1944, the directors of the company resolved to acquire a silk mill, and in order to enable it to do so, its memorandum was amended and sanction of the court was obtained. The assessee purchased the silk mill for Rs. 4.25 lakhs. It made some improvements and worked the mill from September, 1944, to February, 1946, and earned profits therefrom and thereafter sold the mill at a profit. This profit was assessed to Income Tax. It was held that, on the facts, the assessee company having acquired the silk mill to open a new line of business, the purchase was really in the nature of an investment. The purchase and sale of the mill did not amount to an adventure in the nature of trade, and, therefore, the profit did not constitute income from business and was not assessable to tax. *Rajagopalan J.* said as follows :

"The Supreme Court pointed out in *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, : If a person invests money in land intending to hold it, enjoys its income for some time and then sells it at a profit, it would be clear case of capital accretion and not profit derived from an adventure in the nature of trade. That in our opinion is how the purchase by the company and the subsequent and unconnected sale should be viewed in this case..... As has been repeatedly pointed out, even if the purchase and sale was contemplated and provided for even at the time of the purchase, the two transactions together might lead to either the inference, that the purchase constituted the investment

or that the purchase and sale together constituted an adventure in the nature of trade. It is either the one or the other with no possibility of a half-way house. If however there was no intention to sell at all and the purchase and sale constituted two independent transactions, the purchase would really be consistent only with an intention to acquire and hold the property purchased as an investment. If it is an investment, the subsequent sale will not make either the purchase or the sale or both taken together an adventure in the nature of trade."

It was held that there was no evidence to show that at the time of the purchase in September, 1944, the company had any intention to sell the mill.

Since the decisions rest on their own facts, it is not always easy to apply the conclusions to another given set of facts. In *Rutledges case* [(1929) 14 Tax. Cas. 490.], a man purchased one million rolls of toilet papers and resold them at a profit. In the case of *Commissioner of Inland Revenue v. Fraser* [(1942) 24 Tax. Cas. 498.], a person who was a wood-cutter bought an enormous amount of whisky and even without taking delivery thereof sold it at a profit. In such cases it is easy to come to a conclusion that there was no intention of personal use or consumption and they were adventures in the nature of trade. It is not, however, equally easy to come to a conclusion upon facts which are not on the border line.

I will now come to the facts of the present case. The assessee, as I have already stated, is a joint family business and the members thereof carry on business as dealers in scrap iron and hardware. The karta, Janki Ram, appears to be the person in charge of the business, and indeed, in the assessment order, the Income Tax Officer refers to the assessee as an individual. Probably he had Janki Ram in view. The assessee has been dealing for the last 30 or 40 years in scrap iron and hardware. In the assessment order, it is stated that its method of business is to buy from the local market ordinary scraps as also iron goods from auction, railways and other companies, with the sole purpose of selling them at a profit in the ordinary course of business. It is admitted that the assessee did not carry on the business in jute at any time before the purchase of jute press. The next important fact is that at or about the time when the transaction took place, there was a scare in the city of Calcutta due to Japanese bombing and throughout 1942 the karta of the family, the members thereof, as also the munim and other employees, left Calcutta due to panic and the business remained closed for most of the year. In the order of the Appellate Assistant Commissioner, these facts have been elucidated and a number of dates have been given to show that the assessment proceedings were being continually postponed because the assessee and its employees had all migrated from Calcutta and the books had been removed to Ajamgarh. It is further stated that the munim had fled to his native place and Janki Ram had gone to his native place and from there to Kanpur. It is also stated that the business premises was under lock and key. It appears clearly from these facts that throughout 1942 the business was not carried on and the proprietors had all fled from West Bengal in

panic. The next fact of importance is to scrutinise the details of the actual purchase. The jute press known as the "Homer Jute Press" belonging to Messrs. Hoare Miller & Co. Ltd. consisted of three well-marked demarcations. The original sale deed contained three schedules of properties and this was repeated in the conveyance to R. P. Saha. The first schedule consisted of the main jute press, together with godowns, and was of the area of three bighas and odd. The second schedule consisted of certain leasehold properties, being Government khas-mahal lands, together with a corrugated iron-shed godown on steel frame. This was of the area of about eleven cottahs and odd. The third schedule property was a license, presumably also from the Government. This land measured one bigha and odd and contained a two-storeyed corrugated iron-shed godown on steel frame. The assessee did not take a transfer of the lease not the licence, but merely bought the girdar, etc., and the steel frames, obviously with the object of dismantling the same and selling them as scrap-iron or as a second-hand goods. This part of the transaction was completely within the usual course of its business. The next fact to be note is that the assessee did not go into the market and try to get the highest price possible. The assessee was approached by the manager of R. P. Saha and at once decided to get rid of the property. Mr. Mitter has argued that the fact that no advertisements were issued rather goes to support the assessee's case. I am far from satisfied that this is so. I shall presently give my reasons. The question being as to what the assessee intended to do with the subject-matter of his purchase, it is relevant to refer to a statement of the facts of the case which was filed by the assessee through Janki Ram, a copy of which appears at page 40 to 42 of the paperbook. This is what it states :

"(1) At all material times your petitioner which is a joint Hindu family business, used to carry on business in iron goods and scraps.

(2) In October, 1942, during the war period one Janki Ram Shaw, a member of the family of your petitioner, purchased a jute press known as Homer Jute Press at Baranagore from Hoare Miller & Co. Ltd., for a consideration of Rs. 2,48,500 in his individual capacity with an intention to carry on the said business of jute press. The said transaction was an isolated transaction and at the time of the purchase your petitioner had no intention of selling the same for a profit.

(3) Soon after the purchase of the said jute press there was bombing in Calcutta under the Japanese war and due to panicky conditions skilled labourers were not available.

(4) Your petitioner carried out certain minor repairs to the said jute press and kept the said press in a running condition.

(5) Your petitioner could not immediately after purchase due to want of labour run the said jute press on its own account."

We find, therefore, that the assessee has committed itself to the definite case that it purchased the jute press for the purpose of working it. With that end in

view, repairs were done and the press was kept in a running condition, but it could not be run for want of labour. Now, the Income Tax authorities have not believed this story. The way they have looked at it is as follows : The assessee was a dealer in scrap iron and never ran a jute press. At the relevant time, all the members of the family and the employees thereof had fled from West Bengal in panic due to Japanese bombing scare and even the books of account had been taken away and the place of business locked up. That being so, it was considered extremely unlikely that the assessee would purchase lands at Baranagore in the vicinity of Calcutta and intend to carry on a business there of a jute press. It does not appear at all how the assessee could have kept the press in a running condition because possession was with Bajoria and litigation was going on. However, this story about not being able to get the labourers to run the jute press has not been believed. The evidence is that immediately after his purchase, R. P. Saha was able to carry on the jute press. Not more than 100 labourers were required, and it has been found that various other jute presses were functioning and there was no particular reason why this press was not able to function. What the Income Tax authorities held was that Janki Ram was a shrewd businessman and realised that owing to the abnormal war times, the price of machinery, etc., were soaring high and he took this opportunity to purchase the jute press which was not then in a working condition, with the sole purpose of selling it at a higher price. There are two points of view and we have to decide as to which one of them can be accepted. Let us apply the tests set out above. Regard being had to the fact that the assessee never dealt in jute before, it must be taken to be an isolated transaction. Now the fact that it was an isolated transaction may turn out to be advantageous to the assessee or vice versa. In some cases, it has been decided that an isolated transaction does not come within the scope of the trading activities of the assessee. For example, in *Leeming v. Jones* [(1930) 15 Tax. Cas. 333.], it was held that the purchase of certain estates by a person who did not deal in the sale or purchase of estates did not make the profit assessable as income. On the other hand, an isolated transaction of purchase and sale of property was held to be a trading adventure in *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, . As *Sinha J.* (as he then was) said in *Saroj Kumar Mazumdar Vs. The Commissioner of Income Tax, West Bengal, Calcutta*, , each case must be determined upon the total impression created on the mind of the court, by all the facts and circumstances disclosed in that case. To my mind, a most important indication is the manner in which the assessee purchased the press. In a jute press, the godowns are of the greatest importance. And yet, the assessee made the effort to purchase or get a transfer of the leasehold interest in the second schedule or the licence in the third schedule. The clear intention was that the structure upon these lands would be dismantled and the iron sold as scrap or as second-hand goods. That clearly militates against the intention of the assessee to carry on the business of jute press. The surrounding circumstances, namely, that the members of the family including the karta had fled from West Bengal, and that even the munim had similarly fled and the books of account had been taken

away and the place of business came under lock and key, makes it almost impossible to believe that the assessee intended to buy a jute press in the vicinity of Calcutta and to carry on a business there. The fact that the property was sold to the first bidder who came along seems to me to be indicative of the fact that the assessee had always the intention of getting rid of the property as soon as attractive proposition was received. Therefore, the fact that no attempt was made to contact other purchasers or find out whether a higher bid was possible, and the lack of advertisements, do not, in the background of this case, help the assessee. It rather shows the keen desire of the assessee to get rid of the property as soon as possible and to convert the same into cash money. In a period of panic this can easily be understood. It is however not consistent with the conduct of a person who intends to carry on the business of a jute press which it has purchased. After all, the initial intention has to be gathered from subsequent conduct. The intention of a person can only be gathered from what he has done and how he has acted. The question to be answered is as to whether it is consistent that the members of the family should fled from West Bengal, keeping the business under law and key and that, at the same time, they would purchase lands and factories in or around Calcutta intending to carry on a business, of which they had not the slightest previous experience. Assuming that labourers were scarce, it would be a fact well-known to the assessee at the time of the purchase. Then why did he purchase a jute press, when he knows that he will not be able to run it ? As I have stated above, part of the purchase and sale was doubtlessly in the nature of trading adventure, because it amounted to no more than a sale of some iron scrap, which was well within the scope of the ordinary trading activities of the assessees. In my opinion, the facts found indicate that the case made by the assessee that it intended to carry on business of a jute press cannot be believed. We are, therefore, left with the other case made out on behalf of the department, and that seems to be the more likely one. Perhaps, if we look at each individual fact, it may be capable of being explained away. But if one looks at all the facts and the surrounding circumstances, then the total impression created in the mind is that the case of the department is the correct one and that the transaction was in the nature of an adventure in trade. The fact that certain repairs were made and the machinery put in a running condition, rather supports the theory that the assessee intended to make a property readily saleable. It is not shown that such repairs, etc., were done before the assessee was approached by R. P. Saha. Having come to know that the property could be readily sold as a going concern, it is not to be wondered that some repairs were done to the building and machinery. On the other hand, having done so, the assessee did not make a slightest effort to commence the running of the press. At no time did he get a licence to run a factory, or even apply for such a licence. As I had stated, the story that it could not do so for want of labourers has not been established. After all, the running of jute press does not depend on labourers. There is no evidence at all to show that the assessee made any other arrangement to run the jute press. The statement of case, which in its final form is an agreed statement, states that when R. P. Saha

took over the jute press he "experienced no difficulty in getting labourers to run the factory in July, 1943." The deposition of Mr. H. L. Roy, the manager of R. P. Saha, has been annexed to the statement of case. That also shows that there was no difficulty in running the jute press. He said : "We had no difficulty in getting people to run the machinery in July 1943". Therefore, the story of the assessee that it could not get a labourers to run the press and, therefore, had to sell it, cannot be believed. If that be so a question may be asked why this false case has been made ? The obvious reason is that the assessee intended to mask its real intention in purchasing the jute press. It was admitted before the Appellate Assistant Commissioner that the assessee did not contact any one for canvassing orders for getting jute bales placed in the assessee's jute press. These are facts which indicate that the assessee never had an intention at the time of purchase to run the jute press.

The result is that for the reasons stated above, the question asked should be answered in the affirmative. The Commissioner of Income Tax is entitled to his costs. Certified for two counsel.

DUTTA J. - I agree.