
(2009) 02 RAJ CK 0056
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Ajit Kumar Arya

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Income Tax Act, 1961 — Section 2, 256, 45

Citation : (2009) 180 TAXMAN 333

Hon'ble Judges : R.C. Gandhi, Acting C.J.; Mohammad Rafiq, J

Bench : Division Bench

Judgement

1. This reference has been made by the Income Tax Appellate Tribunal at the instance of the revenue u/s 256(1)/256(2) of the Income Tax Act, 1961 pertaining to the assessment year 1973-74 seeking opinion of this Court on the following questions of law:

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in not holding that this was a case of transfer of a capital asset as defined u/s 2(14) of the Income Tax Act and, therefore, the profit or gain arising from this transfer was chargeable to Income Tax under the head "Capital gains" as per Section 45 of the Income Tax Act, 1961 ?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the sale price realised on the sale of the land was an agricultural income treating the land as an agricultural land and exempted u/s 2(1)(b) of the Income Tax Act, 1961 ?

2. Heard learned Counsel for the parties.

3. Learned Counsel for the revenue has pressed into service the judgment of Apex Court delivered in the case of Singhai Rakesh Kumar Vs. Union of India and Others, , wherein, the issue was similar and identical. Dealing with this proposition, Supreme Court held as under:

Under the terms of the Constitution, Parliament is empowered to legislate to say

what "agricultural income" means. What Parliament says in this regard in the statute then current relating to Income Tax is the definition of "agricultural income" for the purposes of the Constitution. In regard to such agricultural income the States may legislate. In regard to all other income it is for Parliament to legislate. (see *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*,

It is in this background that the impugned amendments in the 1961 Act may be seen. Clause (1A) of Section 2 defined "agricultural income" to mean, inter alia, "any rent or revenue derived from land which is situated in India and is used for agricultural purposes". Clause (14) of Section 2 defined "capital asset" to mean "property of any kind held by an assessee...but does not include agricultural land in India....". The words "agricultural land in India" were substituted by the Finance Act, 1970, with effect from 1-4-1970, to read thus:

(iii) agricultural land in India, not being land situate:

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;

It appears that by reason of the decision of the Bombay High Court in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another*, an Explanation was added by the Finance Act, 1989, with effect from 1-4-1970, to Clause (1A) of Section 2 which read thus:

Explanation. - For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of Sub-clause (iii) of Clause (14) of this section;

The position, as a result, is that income arising from the transfer of agricultural land that falls within the terms of items (a) and (b) of Sub-clause (iii) of Clause (14) of Section 2 falls outside the ambit of revenue derived from land and therefore, outside the ambit of "agricultural income". Such income, therefore, is liable to capital gains tax chargeable u/s 45 of the 1961 Act.

Parliament has, as aforesaid, the power to define what agricultural income is in the 1961 Act; the amendment of Clauses (1A) and (14) of Section 2 thereof in the manner aforesaid are, therefore, good in law. The effect is that the

assessee is liable to pay capital gains tax on the sales of his lands within the municipal limits of Bina.

The reference is accordingly answered in favour of the revenue.