(1989) 07 KL CK 0040

In the High Court Of Kerala

Case No : Income-tax Reference No. 121 of 1984

Commissioner of Income Tax APPELLANT

Vs

Glory Paul RESPONDENT

Date of Decision : 05-07-1989

Acts Referred:
Income Tax Act, 1961 — Section 2(14), 2(1A), 2(24), 45

Citation : (1990) 186 ITR 498

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; V. Rama Shenoi, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court ;

"Whether, on the facts and in the circumstances of the case, was the Tribunal right in law in holding that no tax on capital gains was leviable on the sale of the land in question ?"

2. The respondent is an assessee to Income Tax. We are concerned with the assessment year 1980-81. While making the assessment, the assessing authority brought to tax the capital gains arising from the sale of properties by the assessee. The assessee objected to the assessment stating that the property sold was agricultural land. The plea was negatived. In appeal, the Appellate Assistant Commissioner held that the property was situate in the Cochin Corporation area and its sale will attract capital gains under the Income Tax Act. The levy of capital gains, on the profits arising on the sale thereof, was justified. The Appellate Tribunal, relying upon 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, , held that the capital gains arising out of the sale of agricultural land is not liable to levy of capital gains tax under the Income Tax Act. Thereafter, at the instance of the Revenue, the Income Tax Appellate

Tribunal has referred the question of law, extracted hereinabove, for the decision of this court.

3. We heard counsel for the Revenue. Relying on the earlier decisions of this court in CIT v. T. K. Sarala Devi [1987] 167 ITR 136, followed in Income Tax Reference No. 6 of 1985 dated June 13, 1989 Commissioner of Income Tax Vs. Glory Paul,) (infra) and in Income Tax Reference No. 37 of 1985 dated June 13, 1989 (Commissioner of Income Tax Vs. A.S. Iqbal (legal heir of late A.B. Syed Mohammed),) (infra), counsel for the Revenue submitted that the decision of the Appellate Tribunal is erroneous in law. Counsel for the Revenue also brought to our notice the amendment made by Section 3 of the Finance Act, 1989, to Section 2(14) of the Income Tax Act, 1961. In the light of the above decisions and the statutory amendment effected with retrospective effect, we are satisfied that the decision of the Appellate Tribunal is erroneous in law in holding that no tax on capital gains was leviable on the sale of the land in question. We answer the question in the negative, in favour of the Revenue and against the assessee.

4. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

