(1994) 03 RAJ CK 0016

In the Rajasthan High Court

Case No : Income Tax Reference No. 22 of 1985

COMMISSIONER OF Income Tax — APPELLANT

Vs

GORJA DEVI LILA. — RESPONDENT

Date of Decision : 21-03-1994

Acts Referred:
Income Tax Act, 1961 — Section 2, 256

Citation : (1995) 129 CTR 395 : (1995) 216 ITR 638

Hon'ble Judges : V. K. Singhal, J

Bench : Division Bench

Judgement

V. K. SINGHAL J. - The Income Tax Appellate Tribunal has referred the following question of law arising out of its order in respect of the assessment year 1979-80 u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that no capital gains tax is leviable on sale of garden land situated within the municipal limits of a town in view of the Bombay High Court decision in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, "

The arguments of learned counsel have been heard. In the present matter, the assessee disclosed capital gains on sale of agricultural land within the municipal limits in the return submitted by him. Subsequently, in view of the decision of the Bombay High Court in the case of Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, holding that the levy of capital gains tax on the sale of agricultural land is ultra vires the power of Parliament, the assessee revised the returns and claimed that the capital gains is not liable to tax. The Income Tax Officer did not accept the claim. The Appellate Assistant Commissioner upheld the order on the ground that the validity of the Income Tax Act cannot be examined in appeal. The Income Tax Appellate Tribunal, however, following the decision of the Bombay High Court held that the sale of agricultural land could not be subject to tax under the

Income Tax Act.

We need not go in detail into the controversy raised in the present case because the Explanation to section 2(1A) has been added by the Finance Act with retrospective effect from April 1, 1970. In view of the retrospective amendment as aforesaid, the view taken by the Bombay High Court cannot be relied upon. Therefore, we are of the opinion that the Income Tax Appellate Tribunal was not justified in holding that no capital gains tax is leviable on the sale of garden land situated within the municipal limits of a town in view of the Bombay High Court decision in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another,

Consequently, the reference is answered in favour of the Revenue and against the assessee. No order as to costs.