
(1997) 09 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No. 148 of 1986

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

JAGDISH SINGH.

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

FINANCE ACT, 1989 — Section 2
Income Tax Act, 1961 — Section 2, 256

Citation : (1998) 144 CTR 73

Hon'ble Judges : Ashok Bhan, J

Bench : Division Bench

Judgement

ASHOK BHAN, J. :

At the instance of the Revenue, the following question of law has been referred to this Court by the Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as the Tribunal) for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in upholding the decision of CIT(A) that capital gains arising from transfer of agricultural land located within the municipal limits is not liable to capital gains tax ?"

2. Assessee is an individual by status and was owning land jointly with Shri Manmohan Singh, Smt. Lachhman Kaur, Smt. Shubh Lata and one other measuring 1829 Marlas within the municipal limits of Phagwara. This land was sold in July, 1980, to M/s Sukhjit Starch & Chemicals (P) Ltd. Phagwara, for a consideration of Rs. 11,00,000. The transaction of sale fell in assessee's asst. yr. 1981-82. The ITO treated the land to be capital asset because it fell within municipal limits of Phagwara. Assessee and his co-owners claimed that no capital gain liable to tax was earned on the sale of agricultural land as the income earned was earned on the sale of agricultural land as held by the Bombay High Court in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, The ITO rejected the plea of the

assessee and other co-owners by observing that the Bombay High Court decision had not been accepted by the Department and an appeal had been preferred to the Supreme Court. He proceeded to compute the capital gains in accordance with law and brought to tax an income of Rs. 2,35,790. Similar assessments were framed in the case of other co-owners as well. Assessee's appeal before the CIT(A) was accepted. The CIT(A) followed the view of the Bombay High Court in Manubhai's case (supra) and held that the ITO was not legally justified to assess the income arising from the acquisition of land, which was admittedly put to use for agricultural purposes under the head capital gains and deleted the addition of Rs. 2,35,750 made by the ITO.

3. Revenue filed an appeal before the Tribunal which was dismissed. Tribunal also followed the view expressed by the Bombay High Court in the aforesaid judgment. On a reference application filed under s. 256(1), the Tribunal referred the question of law reproduced in the earlier part of the judgment.

4. Mr. B. S. Gupta, Senior Advocate, appearing for the Revenue, relying upon a judgment of this Court in Tuhi Ram Vs. Land Acquisition Collector and Another, contended that the sale of agricultural land situated within the municipal limits would come within the ambit of a capital asset and the transfer of the same would attract the capital gains.

5. We find force in the submission of Mr. Gupta. This Court in Tuhi Ram's case (supra) specifically differed with the view taken by the Bombay High Court in Manubhai A. Sheth's case (supra) and held that the Explanation inserted in s. 2(1A) by the Finance Act, 1989, w.e.f. 1st April, 1970, has brought about a change in the law and after that date, the sale made of certain specified agricultural lands situated in the municipal limits would attract capital gains. It was held as under (reproduced from the head note) :

"Compulsory acquisition of agricultural land under any law for the time being in force is a transfer within the meaning of s. 2(47) of the IT Act, 1961. The expression "capital asset" means property of any kind held by the assessee, whether or not connected with his business or profession. It, however, does not include agricultural land in India except the class of lands included in items (a) and (b) of s. 2(14)(iii). In order to qualify for such exemption, it is not enough that the land was once agricultural land. It must be agricultural land even at the time of sale or transfer. By the Finance Act, 1970, w.e.f. the asst. yr. 1970-71, certain specified lands situate in urban areas or semi-urban areas were brought within the definition of capital asset. When a capital asset is sold and if profit or gain results from such a sale, it is chargeable, not because it is revenue, but because the statute specifically charges the resulting capital gain by including it as income. Although land is the source of income, income is derived not by the use of land, but by the sale of the land, that is, by conversion of the land into cash. The resultant income is not agricultural income. The Explanation inserted in s. 2(1A) by the Finance Act, 1989, w.e.f. 1st April, 1970, makes the position clear when it declares 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-cl. (iii) of cl. (14) of s. 2. The Explanation completely renders ineffective the ratio of the decision in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another*, "

Following the view taken by this Court in *Tuhi Rams* case (supra), it is held that the Tribunal was not right in law in holding that the capital gains arising on the transfer of agricultural land situated within the municipal limits was not chargeable to Income Tax in the assessee's hands and the question referred to us is answered in the negative i.e. in favour of the Revenue and against the assessee. No costs.