

(1980) 01 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 260 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Jawahar Development Association

RESPONDENT

Date of Decision : 15-01-1980

Acts Referred:

Citation : (1980) 16 CTR 383 : (1981) 127 ITR 431 : (1980) MPLJ 514

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : P.S. Khirwadkar, for the Appellant; M.C. Purohit, for the Respondent

Judgement

G.P. Singh, C.J.

This is a reference u/s 256(1) of the I.T. Act, 1961, made by the Income Tax Appellate Tribunal at the instance of the Dept. referring for our answer the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the land sold by the assessee was agricultural land, the surplus on the sale of which was not chargeable to tax under the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the surplus of Rs. 4,447, Rs. 10,607, Rs. 18,944 and Rs. 6,851 realised on the sale of lands in the assessment years 1964-65, 1965-66, 1966-67 and 1967-68, respectively, represented merely a return of capital investment, not liable to tax ?

(3) Whether, on the facts and in the circumstances of the case, the surplus amounts referred to above in question No. (2) arose to the assessee-firm from an adventure in the nature of trade and hence the said amounts are chargeable to tax as income in the hands of the assessee-firm in the respective assessment years under reference ?"

The relevant assessment years are 1964-65, 1965-66, 1966-67 and 1967-68. The relevant previous years are the corresponding previous financial years. The

assessee is a partnership firm and has been assessed for these years as unregistered firm but treated as a registered firm u/s 183(b). The assessee-firm consists of two partners, namely, Purandeo Sindhvani and Lalit Mohan Sachdeva.

Survey No. 12/2, area 30.02 acres, and survey No. 26, area 0.80 acres, of village Gohalpur, belonged to Baldev Prasad who was ex-malguzar of the village. By an agreement dated 6th February, 1961, Baldev Prasad and his wife, Smt. Surjanbai, agreed to sell these survey numbers in favour of Bhimsen Sachdeva, father of Lalit Mohan Sachdeva, or his nominees. The said survey numbers were sold by Baldev Prasad and his wife on 16th October, 1961, in favour of Lalit Mohan Sachdeva and Purandeo Sindhvani, the partners of the assessee-firm, for a sum of Rs. 45,000. In the sale deed the survey numbers are described as khudkasht of the vendors. Village Gohalpur is on the outskirts of the Jabalpur City and is within the corporation limits. The fact that the village is within the corporation limits, although not stated in the Tribunal's order, is apparent from the assessee's return which shows payment of municipal corporation duty of Rs. 9,000. The vendees, i.e., the partners of the assessee-firm, were about 23 years of age at the time of the purchase of the aforesaid survey numbers. They are both mechanical engineers. The family business of Lalit Mohan Sachdeva is soap manufacture and that of Purandeo Sindhvani, hardware goods.

Soon after the purchase of the aforesaid survey numbers, the vendees framed a scheme for selling the entire land by dividing it into building plots and the land was plotted out into 181 plots. The scheme was not approved by the Town Planning Board on 24th April, 1962. The colony which was to come up by sale of the building plots was named in the scheme as Sachdeva Nagar. The plots in this scheme were divided into four series, viz., A to D.

Five plots were sold between 28th September, 1962, and 9th May, 1963, 57 plots were sold between 22nd December, 1964, and 27th March, 1965, 36 plots were sold between 16th April, 1965, and 16th August, 1965, and 7 plots were sold between 24th August, 1966, and 27th December, 1966. The total area covered by these plots is twenty-five per cent. of the total area of the entire land.

The Madhya Pradesh Town Improvement Trust Act, 1960, was extended to the City of Jabalpur from 1st March, 1963. It appears that in December 1964, the improvement trust proposed town improvement schemes Nos. 9 and 9-A in which there was a proposal to acquire 6.26 acres of survey No. 12/2 and 0.80 acre of survey No. 26/1. A notice dated 26th December, 1964, was issued by the trust in that behalf. The partners of the assessee-firm raised objections by letters dated 9th March, 1965, and 23rd October, 1965. Although some correspondence in that respect was produced for the first time before the Appellate Tribunal, copies of these letters were not produced. It, however, appears that in these letters the partners of the assessee had stated that they had already divided the area into plots and the town planning scheme of Sachdeva Nagar framed by them had already been approved by the Town Planning Board and the Corporation. In their letter dated 27th November, 1965, the partners of the

assessee-firm again said that after their town planning scheme was approved they carried out survey work and laid out plots and that 89 plots, practically all in Survey No. 12/2, had been sold out. The partners of the assessee-firm were intimated by the Town Improvement Trust that the schemes Nos. 9 and 9A had been approved by the Government on 2nd May, 1968.

The returns for all the relevant years were filed voluntarily by the assessee in the status of an unregistered (?) firm. In these returns, the assessee declared its income from business of purchase and sale of land as follows : Rs. 3,447 for the assessment year 1964-65 ; Rs. 10,607 for the assessment year 1965-66 ; Rs. 18,954 for the assessment year 1966-67; and Rs. 6,851 for the assessment year 1967-68. A partnership deed was executed on 1st April, 1965, by Purandeo Sindhvani and Lalit Mohan Sachdeva in which the name and style of the partnership business was described as "M/s. Jawahar Development Association". The preamble of this deed states that the aforesaid persons had purchased agricultural land from Smt. Surjanbai and Baldev Prasad for a sum of Rs. 45,000 and that they had been making improvements on the said land and had been able to make plots for residential buildings. Another agreement was executed to give effect to the direction of the Registrar of Firms, Gwalior, for changing the name of the partnership business and the name was changed to "M/s. Mahalaxmi Estate Traders".

By letter dated 24th October, 1968, the assessee took the stand before the ITO, that the returns had been filed in the status of a registered firm under a misconception of the legal position and that really there was no partnership at all and no business had been carried on. It was also stated that the land was subject to payment of land revenue, that it was agricultural in nature and the profit arising from sale of part of the land was exempt from Income Tax under the I.T. Act. The same stand was taken in a subsequent letter.

The ITO held that the purchase of land was with the intention of selling it later with profit and that the purchase and sale of plots was an adventure in the nature of trade and was taxable as income from business. On this finding, the ITO assessed the income as returned by the assessee in its returns. In the appeals filed by the assessee the same view was taken by the AAC, In appeals filed against the orders of the AAC, the Tribunal came to the conclusion that the land in question was agricultural land and any income from sale of a portion of this land could not be taxed under the I. T. Act as it was merely a return of the capital investment. The Tribunal also found that the transactions of purchase and sale of land did not amount to any adventure in the nature of trade. On these findings, the Tribunal allowed all the appeals filed by the assessee. The Tribunal's conclusion is contained in para. 12 of its order and is as follows :

"The character of this land is clearly that of an agricultural land and hence any income from sale of a portion of this land cannot be taxed under the Indian Income Tax Act. It is merely a return of the capital investment. This is the clear view which comes out from the facts of the case irrespective of the fact whether

the transactions made were or were not an adventure in the nature of trade though from the facts and circumstances of the instant case we would like to hold that the same do not constitute an adventure in the nature of trade. It is correct that there are some circumstances which go to show that this activity was of business nature but at the same time there are other circumstances which lead to the contrary conclusion and the same are more weighty in nature, we have to take the cumulative effect in view and further the burden is on the Department to prove that the receipts are of taxable nature. Besides, relying on some circumstances no reliable material has been brought on record in this connection in its favour. We, therefore, hold in the first instance, that the land is agricultural in nature and hence any income earned by the assessee on sale of some portions of it amounts merely to a return of capital investment and cannot be taxed. Further, we are also of the opinion that these transactions are not an adventure in the nature of trade."

The status of the assessee, as that of a registered firm as held by the ITO and the AAC, was not disputed by the assessee before the Tribunal.

On an application made by the Dept., the Tribunal, as stated earlier, referred the questions of law which we have set out above.

In holding that the income as returned by the assessee was not chargeable to Income Tax, the Tribunal has laid great stress on the fact that the land was agricultural land and its sale was not chargeable to tax under the I.T. Act, 1961 "irrespective of the fact whether the transactions made were or not an adventure in the nature of trade". In our opinion, if the activity of the assessee in purchasing the land and selling the same into plots constituted an adventure in the nature of trade, the mere fact that the land was agricultural land could not make the profits arising from sales exempt from Income Tax. Indeed this position was not disputed before us by the learned counsel for the assessee. The real question, therefore, before us is whether the purchase of land by the partners of the assessee-firm and sale thereof into plots during the relevant accounting years constituted an adventure in the nature of trade or business. The question whether a transaction is an adventure in the nature of trade has to be decided on a consideration of all the relevant facts and circumstances. The answer to the question does not depend upon the application of any abstract rule or principle but depends upon the total impression and effect of all the relevant factors and circumstances established in the particular case. Normally, the purchase of land represents investment of money in land. Purchase of land and sale thereof at a profit cannot, therefore, without anything more be assumed to be an adventure in the nature of trade. There may, however, be circumstances which may show that the purchase of the land was not made as an investment of capital and the sale thereof at a profit is not merely a return of capital with accretion and that the whole thing was an adventure in the nature of trade. Cases may arise where the purchase is made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or

otherwise enjoying or using it. The presence of such an intention raises a strong presumption that the transaction is an adventure in the nature of trade (See *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, . In this context, the Supreme Court in *Raja J. Rameshwar Rao Vs. Commissioner of Income Tax, Hyderabad*, , pointed out.

"When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it but in parcels, he is dealing with land as his stock-in-trade ; he is carrying on business and making a profit."

These principles were approved in *Khan Bahadur Ahmed Alladin and Sons Vs. Commissioner of Income Tax, Andhra Pradesh*, and *P.M. Mohammed Meerakhan Vs. Commissioner of Income Tax, Kerala*, . It is also well settled that the question whether a particular transaction is a capital investment or an adventure in the nature of trade is a mixed question of law and fact: *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, , *Raja Bahdur Kamakhya Narain Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, and *Dalmia Cement Ltd. Vs. Commissioner of Income Tax, New Delhi*, .

We have earlier set out the various facts and circumstances which have been established in the instant case. It is true that the land purchased by the assessee was agricultural land. The partners of the assessee-firm were, however, not agriculturists. Soon after the purchase of the land, they divided the whole area into building plots for developing a colony styled as Sachdeva Nagar and got the scheme approved by the Town Planning Board. This is a very strong indication that the sole intention in purchasing the land was of reselling it at a profit by dividing it into plots and to treat the land as a stock-in-trade and not as a capital investment. The learned counsel for the assessee submitted that the land was divided into plots and sold with a view to save it from acquisition by the Town Improvement Trust. It is difficult to accept this argument for the simple reason that at the time when the land was divided into plots and the scheme of developing a colony styled as Sachdeva Nagar was got approved, there was no inkling that the Madhya Pradesh Town Improvement Trust Act would be extended to Jabalpur and that the Town Improvement Trust would frame a scheme covering the land in question. We have already stated that the Act was brought into force in the city of Jabalpur on 1st February, 1963, and the proposal for schemes to cover a part of the land was made by the Town Improvement Trust in December, 1964. Before December, 1964, the land had not only been divided into plots and a scheme for selling the plots and developing a colony got approved by the Town Planning Board but five plots had actually been sold by May, 1963. It, however, does appear that after receipt of notice of the Town Improvement Trust intimating that a part of the land had been included for acquisition in schemes Nos. 9 and 9A, the assessee increased the frequency of

the sale of plots in this area. This does not, however, show that the steps to divide the land into plots and to obtain the approval of the scheme for developing a colony by sale of plots were taken with a view to get rid of the Town Improvement Schemes proposed by the Town Improvement Trust. The subsequent acts of filing the returns showing profit from sale of plots as income from business, of executing a partnership deed on 1st April, 1965, naming the business as M/s. Jawahar Development Association and of executing another agreement on 10th September, 1966, to change the business name to M/s. Mahalaxmi Estate Traders are all indicative of the fact that the purchase of land and sale thereof into plots was an activity in the nature of trade and business.

The learned counsel for the assessee submitted before us that the land purchased was agricultural land and that the purchase was an investment of capital in agricultural land. In this connection, our attention was drawn to the revenue khasras for the relevant years which go to show cultivation only in about 2 acres of land in 1964-65, 1965-66 and 1966-67. The khasra for the year 1967-68, is not material as it covers a period which is beyond the previous year for the year 1967-68, relevant in this case. These revenue khasras were produced for the first time before the Tribunal but the assessee did not state that the land was cultivated by it or its partners. Even assuming that the area mentioned in the khasras for the years 1964-65 to 1966-67, was cultivated by the assessee or its partners, the area covered is negligible and it does not show the intention that the land was purchased for carrying on agriculture. As stated by us, soon after the purchase of the land it was divided into plots and the scheme for dividing it into plots was got approved in April, 1962, which clearly shows that the whole idea in purchasing the land was to make profit by dividing it into plots and selling them.

The learned counsel for the assessee also submitted that after December, 1966, there has been no sale of plots, even if this be so, it only shows that the assessee gave up the idea of selling the plots after December, 1966, to obtain better price in future or to use the land for some other purpose. It may even be that the business of selling plots which the assessee carried up to the previous year relevant to the assessment year 1967-68, may have been stopped, yet it is clear that during the relevant previous years the assessee did carry on the business of selling plots.

The learned counsel for the assessee also argued that the assessee had not advertised the plots for sale and had not in fact incurred any development expenditure which goes to show that it had no intention to carry on any business of selling plots. The non-incurring of any expenditure on development or advertisement goes to show that the assessee was able to sell the plots even without incurring such expenditure. The absence of any expenditure of this nature does not negative the conclusion strongly supported by other circumstances that the assessee purchased the land with a view to earn income by selling the same by dividing it into plots.

The Tribunal laid great stress on the fact that the land was agricultural land and that it was not got diverted into building land and that the land revenue was being paid by the assessee. These factors have no bearing for the reason that it is not disputed that the land was divided into building plots and the plots that were sold were for building purposes. It is not necessary under the law that a person selling agricultural land for building purposes must first get it diverted for the person purchasing it for building purposes can himself apply for diversion before he starts the building operations.

The learned counsel for the assessee strongly relied upon *Deep Chandra and Co. Vs. Commissioner of Income Tax*, . The facts in that case were materially different. In that case, a zamindar entered into an agreement for the purchase of a zamindari property. He had to file a suit for specific performance of the agreement. To finance the litigation, a partnership was entered into with four other persons in 1944. The main and predominant object of the agreement was to provide finances for litigation. One of the modes of dealing with it, in case the litigation was finally decided in favour of the zamindar, was to dispose of the property. At the time when the partnership was entered into, the question of abolition of zamindari was not within anticipation and purchase of zamindari property was a recognised mode of investment. On the facts and in the circumstances of the case, it was held that the purchase of land was not made with an eye on the realisation of profits from the sale of property and was, therefore, not an adventure in the nature of trade. The case on facts bears no resemblance to the case on hand.

Having considered the totality of the circumstances we are of opinion that the purchase of land and the sale thereof as plots during the relevant years constituted an adventure in the nature of trade and the profit from sales was liable to be taxed in each year as business income.

For the reasons given above, we answer the questions as below:

Question No. 1 : The land at the time of purchase was agricultural land but it was sold in plots for building purposes and the income from sales was assessable to tax as business income.

Questions Nos. 2 and 3: The surplus amounts realised from the sale of plots constituted income from an adventure in the nature of trade and not return of capital investment. The amounts were taxable as business income of the assessee.

There shall be no order as to costs.