(1989) 06 KL CK 0029

In the High Court Of Kerala

Case No : Income-tax Reference No. 6 of 1985

Commissioner of Income Tax APPELLANT

Vs

Muledath Mohammed RESPONDENT

Date of Decision : 13-06-1989

Acts Referred:

Citation : (1990) 186 ITR 498(1)

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

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; K.I. Mayankutty Mather, 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 Tribunal held that the assessee cannot be assessed on the capital gains which accrued or which arose out of the transfer of agricultural lands. Reliance was placed on 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, . It, is, thereafter, at the instance of the Revenue that the question of law, formulated hereinabove, has been formulated for the decision of this court.

3. We heard counsel. At the time of hearing, it, is agreed that this court had dissented from 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, and has held that the income arising from the transfer of agricultural lands is exigible to capital gains tax. The decision is reported in CIT v. T. K, Sarala Devi [1987] 167 ITR 136 . In the light of the decision of this court in T. K. Sarala Devi''s case [1987] 167 ITR 136, we are of the view that, the decision of

the Appellate Tribunal was not justified in law. We answer the question referred to us in the negative, against the assessee and in favour of the Revenue.

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, immediately.