(1993) 02 BOM CK 0057

In the Bombay High Court

Case No : IT Ref. No. 74 of 1978

Commissioner of Income Tax — APPELLANT

Vs

P.C. Joshi and Another — RESPONDENT

Date of Decision : 17-02-1993

Acts Referred:
Income Tax Act, 1961 — Section 2(14), 254

Citation : (1993) 202 ITR 1017

Hon'ble Judges : U.T. Shah, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : Dr. V. Balasubramanium, for the Appellant; G. Krishnan, for the Respondent

Judgement

Sujata Manohar, J.—Under s. 256(1) of the IT Act, 1961, the following question is referred to us for opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in applying the tests laid down by the Bombay High Court''s unreported decision for the purpose of determining whether or not the plots of land sold by the assessee constituted agricultural lands ?

2. This reference pertains to asst. yr. 1966-67. The two assessee P. C. Joshi and B. C. Joshi are brothers. Father of the assessees owned agricultural property consisting of open undeveloped land admeasuring 9,192 Sq. yds. in the Registration District of Bombay sub-urban sub-district Bandra being Sr. No. 135/6 and 135/1B of Mulund Divn. Father of the assessees by a gift deed dt. 7th June, 1962 gifted a piece of land admeasuring 2,727 sq. yds. out of this land to the assessees. This land has been sold by the assessees to the Maharashtra State. Co-operative Bank Ltd. on 24th June, 1965 for a sum of Rs. 99,656.99 p. Out of the land so sold, the plot under survey No. 135/6 had been described as agricultural property and the portion of the plot under survey No. 135/1B had been described as non-agricultural property. There is no dispute that the lands under survey No. 135/6 were assessed as non-agricultural lands. The adjoining

lands were under acquisition of the Maharashtra Housing Board under land acquisition proceedings pending on the date of the sale.

3. The Tribunal, while considering whether capital gains tax can be levied on the sale of this land by the assessees, has applied the tests laid down by the Bombay High Court in an unreported judgment in the case of CWT vs. Poddar Mills Ltd. (WT Ref. No. 5/64 decided on 4th February, 1972). The Tribunal held : (1) Except for the portion of land covered by survey No. 135/1B, other lands were agricultural lands, (2). They have been described as agricultural lands in the sale deed; (3). There is no material on record to suggest that these lands were put to non-agricultural use. The Town Planning Scheme became operative in this area much after the date of the sale deed and only in the year 1971; and (4). The land continued to be assessed under the Land Revenue Code as agricultural land. The Tribunal, therefore, held that the land covered under survey No. 135/6 was agricultural land. It, therefore, directed that only surplus arising on the sale of land covered under survey No. 135/1B should be subject to tax. This was in view of s. 2(14)(iii) of the IT Act which exempted, at the material time, agricultural lands in India, from the definition of capital assets.

4. The factors which have been considered by the Tribunal in deciding whether the land should be considered as agricultural land, are not in any manner inconsistent with the tests laid down by the Supreme Court of India in the case of Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, . The Supreme Court has also said that entries in the revenue record are good prima facie evidence, though they may not be conclusive. In the present case also, the Tribunal has looked at other surrounding circumstances also in addition to the entries in the revenue record for coming to the conclusion it has come to. We may add that the Tribunal was bound to apply the tests laid down by the Bombay High Court in the case of CWT vs. Poddar Mills (supra) as this decision was binding on the Tribunal. In the premises, the question referred to us is answered in the affirmative and in favour of the assessee.

5. No order as to costs.

