**(1993) 09 CAL CK 0004**

**In the Calcutta High Court**

**Case No :** IT Reference No. 106 of 1992

Commissioner of Income Tax APPELLANT

Vs

Ramjhora Tea Co. Ltd. RESPONDENT

**Date of Decision :** 20-09-1993

**Acts Referred:**
Income Tax Act, 1961 — Section 256(2), 28
Transfer of Property Act, 1882 — Section 53A

**Citation :** (1994) 74 TAXMAN 327

**Hon'ble Judges :** Nure Alam Chowdhury, J;Ajit K. Sengupta, J

**Bench :** Division Bench

**Advocate :** A.C. Moitra and R.C. Prasad, for the Appellant; S. Bagchi, for the Respondent

## Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(2) of the income tax Act, 1961 (''the Act'') for the assessment year 1975-76 the following question of law has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the income and/or loss from Bandapani Tea Estate Ltd. from 1st January, 1975 till the end of the previous year cannot be included in the income of the assessee?

The facts leading to this reference are that the assessee is a limited company and was in appeal against the inclusion of income/loss of Bandapani Tea Estate in the assessment year 1975-76. The assessee by an agreement dated 17-3-1975 transferred the interest in Bandapani Tea Estate to Darjeeling Dooars Tea Plantation Ltd. The assessee agreed to sell the said tea estate free from all encumbrances for Rs. 25 lakhs with the stipulation that the purchaser will take the liabilities of Provident Fund (Rs. 1,67,000), land rent (Rs. 58,000) and loans amounting to Rs. 2,42,000. The United Bank of India which was also a party to the above agreement agreed to release the mortgage and further advanced Rs. 21 lakhs to the buyer. The agreement was for purchase of the tea estate with effect from 1-1-1975. The earnest money paid at the time of agreement was Rs. 4 lakhs. It was also decided that the sale disposal and contracts for sale of all tea produced on or after first day of January, 1975 shall be decided wholly and exclusively by the purchaser. There were various other terms in the agreement regarding the satisfaction of loan, discharge of liabilities, etc. The assessee-company did not show any income or loss arising from the said tea estate for the period 1-1-1975 to 31-3-1975. The ITO placing reliance on Commissioner of Income Tax Vs. Bhurangya Coal Co., Provat Kumar Mitter v. CIT [1961] 41 ITR 624 (SC) and Tarunendra Nath Tagore v. CIT [1958] 33 ITR 492 (Cal.), came to the conclusion that the registered deed not having been executed in favour of the buyer, the assessee was the owner of the tea estate. He determined the profit from Bandapani Tea Estate for the pre-take-over period at Rs. 2,87,184. The loss after the take-over period was determined at Rs. 1,79,148.

2. The assessee, being aggrieved, went in appeal before the Commissioner (Appeals) who remitted the matter to the concerned ITO for reconsideration afresh in the light of section 53A of the Transfer of Property Act, 1882.

3. Still aggrieved, the assessee came up before the Tribunal and contended that all the materials before the Commissioner (Appeals) were there and so the Commissioner (Appeals) should have himself given the decision and it was not fair to set aside the issue. The departmental representative, on the other hand, supported the finding of the Commissioner (Appeals).

4. The Tribunal after hearing the parties and after going through the materials placed before it held that the income and/or loss from Bandapani Tea Estate Ltd. from 1-1-1975 till the end of the previous year cannot be included in the income of the assessee. The Tribunal found the following facts:

(a) The assessee who was the owner of Bandapani Tea Estate Ltd. sold the same to Darjeeling Dooars Tea Plantation Ltd. on the basis of an agreement dated 17-3-1975. The interest in the said Tea Estate was transferred to the buyer with effect from 1-1-1975.

(b) The transferee had been carrying on the business with the aforesaid tea estate on and from 1-1-1975 and the assessee did not have anything to do with the said Tea Estate. In other words, there was no business in respect of Bandapani Tea Estate Ltd. which was carried on by the assessee in the relevant year.

(c) It was the buyer who was carrying on the business of Bandapani Tea Estate Ltd. Under the agreement the profit and loss from Bandapani Tea Estate Ltd. had to be included in the assessment of the transferee.

(d) The said agreement was confirmed by the High Court at Calcutta. The ITO did not include the income from the said tea estate in the hands of the assessee from the assessment year 1982-83.

5. Mr. Moitra appearing for the revenue contended that in view of the decision of

 

this Court in the case of Commissioner of Income Tax Vs. Ganga Properties Ltd., the transferee did not become the owner until the conveyance was registered in favour of the transferee, and accordingly, the income from the said tea estate has to be assessed in the hands of the transferor.

6. In our view, this concept of ownership is not relevant so far as the assessment of the income is u/s 28 of the Act. The question in this case is whether the assessee had been carrying on the business with the Bandapani Tea Estate. The Tribunal found as a fact that in terms of the agreement it was the transferee who was carrying on the business from 1-1-1975 and they were accounting for the profit and loss of the said Garden. In that view of the matter, it was the transferee which was liable and not the transferor which did not have anything to do with the Tea Garden which had already been sold and given possession of.

A similar question came up for consideration before a Division Bench of this Court in Commissioner of Income Tax Vs. Rungamatee Tea and Industries Ltd.,

7. Having regard to the facts and circumstances of this case and following the said decision, we answer the question in this reference in the affirmative and in favour of the assessee. There will be no order as to costs.

Chowdhury, J.

I agree.

 