(2002) 01 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 82 of 1986 2 January 2002

Commissioner of Income Tax APPELLANT

Vs

Ravinder Kumar RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (2002) 121 TAXMAN 721

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Full Bench

Advocate : R.P. Sawhney and Kishan Singh, for the Revenue Rajesh Garg, for the Assessee, for the Appellant;

Judgement

Gupta, J.

Are the profits and gains made by the assessee on account of sale of agricultural land exigible to the levy of Income Tax under the heading Capital gains?

2. The assessing officer had disallowed the claim for exemption of the price of land made by the assessee. The order was affirmed by the Commissioner (Appeals), Chandigarh. However, the Tribunal relying upon the decision of their Lordships 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, , held that the income was not exigible to the levy of Income Tax. Aggrieved by the order, the revenue filed a petition u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the capital gains arising from the sale of land actually put to agricultural use wherever located are not liable to tax ?"

3. Mr. R.P. Sawhney, the learned counsel for the revenue, contends that in view

of the decision of this court in Tuhi Ram Vs. Land Acquisition Collector and Another, and that of their Lordships of the Supreme Court in Union of India and Others Vs. S. Muthyam Reddy, , the view taken by the Tribunal cannot be sustained.

4. Mr. Garg appearing for the assessee, does not controvert the position.

5. Income derived from sale of agricultural land is not agricultural income. Thus, it would be exigible to the levy of tax under the head Capital gains. Respectfully following the view taken in the aforesaid two cases, we answer the question in favour of the revenue and against the assessee.

6. In the circumstances of the case, we made no order as to costs.

