

(1998) 06 MAD CK 0085

In the Madras High Court

Case No : Tax Case No. 702 of 1984 (Reference No. 617 of 1984)

Commissioner of Income Tax

APPELLANT

Vs

Sairam

RESPONDENT

Date of Decision : 09-06-1998

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (2000) 242 ITR 104

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—The questions referred to us at the instance of the Revenue, which questions arise out of the assessment of the respondent, which is a firm of cloth merchants, for the assessment year 1966-67, are as to whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the profit arising on account of sale of vacant lands situate at Poona should be treated as capital gains and not as profit from adventure in the nature of trade assessable under the head "Business" and as to whether the Tribunal's view that the purchase and sale of lands at Poona has been made by the partner of the assessee-firm only as an investment and not as a stock-in-trade is based on material on record and reasonable on the facts and in the circumstances of the case.

2. The undisputed facts are that the assessee carries on business as cloth merchant in the city of Madras. One of the partners, on behalf of the firm, entered into an agreement for purchase of land in the city of Poona. That agreement was entered into on July 25, 1964. Under the terms of that agreement, the vendee could obtain a sale deed in his own name or in the names of his nominees. The conveyance in favour of a nominee, if any, was to be executed by the vendors as also by the partner who had entered into the agreement to purchase. Several months after the date of that agreement, the

owners of the land together with the assessee's partner, Vaswani, who had entered into the agreement on behalf of the firm, together executed a deed of conveyance dated May 25, 1965. Under that deed of conveyance, Vaswani, on behalf of the firm was to receive Rs. 41,115.62 out of the total consideration of Rs. 84,738.29. Had the assessee-firm through its partner purchased the land, it would have been required to pay Rs. 43,622 in terms of the agreement dated July 25, 1964.

3. The Assessing Officer treated the amount of Rs. 41,115.62 as business income by treating this transaction as adventure in the nature of trade. That view was reversed by the Commissioner in appeal at the instance of the assessee. The Tribunal has affirmed the view of the Commissioner and rejected the appeal, which had been preferred before it by the Revenue. It is in this background that the Revenue has come before us seeking answers to the questions referred to earlier.

4. Learned counsel for the Revenue placed strong reliance on a judgment of the Supreme Court in the case of *G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax*, wherein the apex court pointed out that an adventure in the nature of trade need not be a trade or business itself, that it is characterised by some of the essential features that make up trade or business but not only by all of them, and that even an isolated transaction can satisfy the description in the nature of trade. However, the court, in the same judgment sounded a strong note of caution by observing that it is impossible to evolve any formula which can be applied in determining the character of isolated transactions which come before the court in tax proceedings. The court held that the decision about the character of a transaction in the context cannot be based solely on the application of any abstract rule, principle or test and must in every case depend upon all the relevant facts and circumstances.

5. The facts and circumstances which are relevant for the purpose of deciding the present reference are : The assessee is a firm of cloth merchants carrying on business at Madras. It does not carry on business of buying and selling land or buying undeveloped land, developing the same, and thereafter disposing of such land, It does not carry on the business of a middle-man entering into agreements for purchase of saleable lands, and, thereafter locating other buyers and selling the same to them at a profit. In fact it does not carry on any business in land. The agreement entered into by the managing partner of the firm for the purchase of a plot of land was in respect of a plot of land situated in the city of Poona, far away from the city of Madras. There is nothing on record to show that even prior to entering into such an agreement, the assessee had intended to sell that plot to the person who bought it ultimately or to any other person for a profit. It is obvious that at the time the agreement of purchase was entered into, the assessee had no definite idea as to whether the value of that land would go up in the near future, whether there would be buyers of land at a higher price, and whether the land would be sold at the price agreeable to the assessee in the

near future. It had, however, committed itself to buy the land and had made itself liable to an action for specific performance or in the alternative for damages, by entering into commitments it made in the agreement. Though the managing partner of the assessee had stated that the assessee had intended to make profit if possible from the plot, the intention to earn profit by itself cannot be decisive as to whether a transaction is in the nature of an adventure which could be characterised as trade. A person may very well buy a plot of land with the idea of reselling the same at a later point of time at a profit. When such a property is resold, the profit earned on that transaction is not to be regarded as business income solely on the ground that at the time of the initial purchase, the assessee had hoped to make a profit at a future point of time. Investment can be made not merely in movables, but, in immovable property as well. There is no presumption in law that all agreements to purchase or actual purchase of immovable property and any subsequent sales of immovable property are to be regarded as adventures of the nature of trade. The intention of the assessee considered along with all other relevant circumstances will have to provide the answer to the question as to whether the transaction is one of investment or adventure in the nature of trade.

6. The Commissioner (Appeals) and the Income Tax Appellate Tribunal have, in our view, rightly reached the conclusion that on the facts and circumstances of this case, it cannot be said that the assessee had entered into an adventure in the nature of trade by entering into an agreement of purchasing the land, and almost a year later, joining in the execution of a sale deed in favour of a third party and receiving a part of the consideration for that transaction. The assessee had in the circumstances only made an investment in land and realised the profit from that investment after nearly a year from the date on which it had entered into agreement to purchase the land. The question referred to us is, therefore, answered in favour of the assessee and against the Revenue. As the assessee is not represented, there will be no order as to costs.