

(1996) 04 MP CK 0004

In the Madhya Pradesh High Court

Case No : MCC No. 735 of 1987, 8th April, 1996

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

SINGHAI RAKESH KUMAR.

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 2(1A), 256(2)

Citation : (1996) 134 CTR 287 : (1997) 91 TAXMAN 165

Judgement

This is an Income Tax reference under s. 256(2) of the IT Act at the instance of the Revenue. The following question of law has been referred for answer by this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the profit arising from the sale of agricultural lands did not amount to capital gains within the meaning of IT Act, 1961 ?"

2. Brief facts giving rise to this reference are that in the previous years relevant to the asst. yrs. 1981-82 and 1983-84, the assessee sold certain agricultural lands owned by him and situate within the Municipal limits of Bina and made certain profits which the ITO assessed as capital gains amounting to Rs. 40,500 and Rs. 18,780 respectively. On appeal, the CIT(A) upheld the order of the ITO. Thereafter, the assessee approached the Tribunal and the Tribunal held that the profits of the sale of agricultural lands were not capital gains within the meaning of provisions of s. 2(14) of the IT Act and the Tribunal relying on the decision in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, of Bombay High Court reversed the finding of both the authorities below and decided in favour of the assessee. Hence, the Revenue approached the Tribunal for referring the case before this Court. Accordingly, the Tribunal has referred the aforesaid question of law for answer by this Court.

3. Suffice it to say that the amendment was inserted in the definition of agricultural income under s. 2(1A) of the IT Act by way of Explanation, which reads as under :

"Explanation - For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-cl. (iii) of cl. (14) of this section."

The amendment has been given retrospective effect from 1st April, 1970 by the Finance Act, 1989. By this amendment, it was clarified that any income arising from the transfer of the land referred to in item (a) or item (b) of sub-cl. (iii) of cl. (14) of s. 2 of the IT Act shall be treated to be capital assets. This clarification in the Explanation itself puts all the controversies beyond doubt and it nullifies the decision of the Bombay High Court in the case of Manubhai A. Sheth (*supra*). Their Lordships of the Supreme Court in the case of G.M. Omer Khan Vs. The Additional Commissioner of Income Tax, A.P., Hyderabad, have held that such income arising from the sale of agricultural property under s. 2(14)(iii)(a) of the IT Act shall be treated to be a capital asset under the Act.

4. It may also be relevant to mention here that a challenge to the Explanation inserted in s. 2(1A) of the IT Act, 1961 and the definition of agricultural income in s. 2(14)(iii)(a) of the Act was also made in Writ Petition No. 31 of 1996 [Singhai Rakesh Kumar vs. Union of India & Ors. (1996) 134 CTR (MP) 280 and we have dismissed the writ petition upholding the validity of the provisions by order dt. 8th April, 1996.

5. In view of the above discussion, we hold that the view of the Tribunal is not correct and, hence, we answer this reference in favour of the Revenue and against the assessee.