

(1987) 04 KL CK 0032

In the High Court Of Kerala

Case No : Income-tax Reference No. 281 of 1981

Commissioner of Income Tax

APPELLANT

Vs

T.K. Sarala Devi

RESPONDENT

Date of Decision : 06-04-1987

Acts Referred:

Income Tax Act, 1961 — Section 2(1), 2(14), 2(24), 45

Citation : (1987) 63 CTR 310 : (1987) 167 ITR 136

Hon'ble Judges : T. Kochu Thommen, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; K.R. Panicker and T.K. Ravindranatha Menon, for the Respondent

Judgement

T. Kochu Thommen, J.—The following question has been, at the instance of the Revenue, referred to us by the Income Tax Appellate Tribunal, Cochin Bench:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and has jurisdiction to hold that the land in question " is not a capital asset within the meaning of the definition" ?"

2. In the assessment year 1974-75, the Income Tax Officer added a sum of Rs. 1,31,525 as capital gains arising on account of acquisition of the assessee's property by proceedings under the Kerala Land Acquisition Act, 1961 (the "K.L.A. Act"), which resulted in an award made during the relevant accounting year. The assessee appealed against that order on the ground that the property which was used for agricultural purposes had been notified u/s 3 of the Kerala Land Acquisition Act as early as 1964, when the Legislature had not treated such property as capital asset within the meaning of Section 2(14) of the Income Tax Act, 1961 (the "Act"). This contention was rejected by the Appellate Assistant Commissioner. On further appeal by the assessee, the Tribunal rejected the assessee's contention that the land acquired was not a capital asset. The Tribunal stated that the land was not acquired in 1964, but in the relevant accounting year when the award was made. This finding has not been challenged

by the assessee. The Tribunal, however, noticed that the Bombay High Court had in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another*, held (p. 121):

"... capital gains made on sale of land situate in India, which land is used for agricultural purposes, would be revenue derived from such land and, therefore, agricultural income within the meaning of Section 2(1) of the Income Tax Act, 1961, and Parliament would have no legislative competence to tax such agricultural income... "

3. The Tribunal accordingly allowed the appeal stating that the sale proceeds constituted income derived from land used for agricultural purposes and such income, being agricultural income, was not chargeable under the Act.

4. The reasoning of the Tribunal is that proceeds of sale of land constituted income derived from land. If that proposition was correct, the Tribunal would be justified in saying that proceeds of sale of land used for agricultural purposes were income derived from agricultural land within the meaning of Section 2(1) and, therefore, not chargeable under the Act. But the fallacy of that assumption is that, when land is sold, the sale proceeds do not constitute revenue but capital: (see *Commissioner of Agricultural Income Tax, Kerala Vs. Kailas Rubber and Co. Ltd.*, and *A.K.T.K.M. Vishnudatta Andharjanam* represented by *D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum*, . The profits or gains arising from the sale of land constitute income because Section 2(24) of the Act includes as " income " capital gains chargeable u/s 45. Such gain is, nevertheless, not income derived from land ; it is income derived by the sale of land. Although land is the source of the income, income is derived not by the use of the land, but by the sale of the land, that is, by conversion of the land into cash. If income results from the sale of agricultural land, it is not " agricultural income " within the meaning of Section 2(1).

5. When capital asset is sold, what is realised is capital receipt and not revenue receipt. If profit or gain results from such a sale," it is chargeable, not because it is revenue, but because the statute specifically charges the capital gain by including it as income. With respect, we do not agree with the reasoning 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*, to the contrary. We are fortified in this conclusion by the decisions in *Ambalal Maganlal Vs. Union of India and Another*, , *B.S. Jayachandra Vs. Income Tax Officer and Another*, and *Commissioner of Income Tax Vs. B.S. Rajendrappa and Others*, .

6. In the circumstances, we have no doubt that the sale proceeds constituted capital receipt and not revenue receipt. The question referred is, in the circumstances, answered in the negative, that is, in favour of the Revenue and against the assessee.

7. We direct the parties to bear their respective costs in this tax referred case.

8. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.