
(1986) 01 KAR CK 0057

In the Karnataka High Court

Case No : Income-tax Reference Case No. 323 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Vardhini and Co.

RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1987) 64 CTR 215 : (1987) 165 ITR 342(1) : (1986) 26 TAXMAN 752

Hon'ble Judges : R.S. Mahendra, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; G. Sarangan, for the Respondent

Judgement

Puttaswamy, J.—In this reference made u/s 256 of the Income Tax Act, 1961 ("the Act"), the Income Tax Appellate Tribunal. Bangalore Bench, Bangalore ("the Tribunal"), at the instance of the Revenue, has referred the following two questions of law for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the amount of compensation received by the assessee for surrendering its leasehold right for the remaining period of lease, was of capital nature ?

(2) Whether the Appellate Tribunal is right in law in holding that it was not open to the Appellate Assistant Commissioner to direct the assessment of the amount which has been held to be capital in nature as capital gains assessable to tax ?"

2. In order to appreciate the questions referred to us, it is necessary to notice in the first instance the facts as found by the Tribunal.

3. Under a lease deed dated March 22, 1963, the assessee, a partnership firm of partners, had taken on lease a property known as "Singara Bagh" bearing Municipal Corporation No. 496 situated at Poonamalle High Road, Madras, from its then owner for a period of 20 years on a rent of Rs. 425 per month. On

December 11, 1964, one Smt. Vengadammal who had become the owner of the said property entered into an agreement of sale of the aforesaid property with a firm called "Madras Property Development Company" to which the assessee was also a party. Under the said agreement, the assessee had to receive a sum of Rs. 1,34,400 in monthly instalments of Rs. 1,400 for a period of eight years as compensation or as premium.

4. For the assessment year 1971-72 relevant to the accounting year ending on March 31, 1971, the assessee claimed that the amount of instalments received by it under the said agreement was a capital receipt and was not revenue receipt. On March 28, 1974, the Income Tax Officer, Assessment-II, Circle-II, Bangalore("the ITO"), in completing the assessment for the said year against the assessee, held that the said receipt was a revenue receipt and not a capital receipt and accordingly subjected the same to tax under the Act. Aggrieved by the said order of the Income Tax Officer, the assessee filed an appeal before the Appellate Assistant Commissioner of Income Tax, Bangalore Range-II, Bangalore ("the AAC") who by his order dated June 29, 1977, allowed the same and held that the said receipt was a capital receipt. Aggrieved by the said order of the Appellate Assistant Commissioner, the Revenue filed a second appeal before the Tribunal which by its order dated October 7, 1978, dismissed the same also declining the alternative plea of the Revenue to subject the receipts to capital gains tax under the Act. Hence, this reference by the Revenue.

5. We will examine the questions in the order in which they are referred to us.

6. Sri K Srinivasan, learned senior standing counsel for the Income Tax Department, appearing for the Revenue, strenuously contends that the sum of Rs. 1,34,400 stipulated to be received in monthly instalments had to be treated as a revenue receipt only and not as capital receipt as found by the Tribunal. In support of his contention, Sri Srinivasan strongly relies on the passages of the treatise "The Law and Practice of income tax" by Kanga and Palkhivala as also the very rulings relied on by the Revenue before the Tribunal.

7. Sri G Sarangan, learned counsel for the assessee, contends that the Tribunal on a correct application of the principles had found that the receipt was a capital receipt.

8. On a fairly detailed examination of the question and bearing in mind the correct legal principles, the Tribunal had found that the amounts received by the assessee, for surrendering the leasehold rights for the remaining period, were in the nature of compensation and was, therefore, a capital receipt. In reaching that conclusion, the Tribunal had kept before it the well-settled legal principles for determining whether a receipt was a capital receipt or revenue receipt. The fact that the amount of Rs. 1,34,400 had to be received in monthly instalments cannot, by itself, be the sole criterion to hold that the receipt was a revenue receipt. We are of the view that the Tribunal has not committed any error in holding that the receipt was a capital receipt. We see no merit in the contention

of Sri Srinivasan. We accordingly hold that question No. 1 had to be answered in the affirmative.

9. We now pass on to examine question No. 2

10. We are of the view that on question No. 2 the matter is concluded by the Division Bench ruling of this court in I T R C No 143 of 1978 decided on September 21, 1983 Commissioner of Income Tax Vs. Maryam Mirza, For the very reasons stated in I T R C No 143 of 1978, we must answer question No. 2 in the affirmative.

11. In the light of our above discussion, we furnish our answers to the questions referred to us to us as hereunder;

Question Answer Question No. 1 In the affirmative, against the Revenue and in favour of the assessee. Question No. 2 In the affirmative, against the Revenue and in favour of the assessee. 12. But, in the circumstances of the case, we direct the parties to bear their own costs.