(1983) 12 CAL CK 0009

In the Calcutta High Court

Case No : Income-tax Reference No. 136 of 1980

Ghose Estates APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-12-1983

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1985) 153 ITR 673

Hon'ble Judges : Satish Chandra, C.J;Suhas Chandra Sen, J

Bench : Division Bench

Advocate : R.N. Bajoria, A.K. Dey and S.K. Bagaria, for the Appellant; M.L. Bhattacharjee and A.K. Sen Gupta, for the Respondent

Judgement

Suhas Chandra Sen, J.—The Tribunal has referred the following question of law u/s 256(1) of the I.T. Act :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in its decision that the profit on transfer of agricultural land was assessable as business income of the assessee on the mere fact that the land in question appeared in the balance-sheet of the assessee having business in dealing of land and building ?"

2. The assessee is a partnership firm. This reference relates to the assessment year 1969-70 for which the previous year of the firm ended on March 31, 1969. The assessee had purchased a plot of land measuring about 10 acres at Chowhatti within the municipal area of Sonarpur, in the District of 24-Parganas. During the year under consideration, the assessee sold 2/3rds of the said plot of land in two lots to a Co-op. Housing Society and made a profit of Rs. 60,582. The ITO held that the amount in question was business income of the assessee. The assessee preferred an appeal to the AAC and contended that the land in question was purchased for the purpose of agricultural operations, but had to be sold due to political disturbances in that area, at that time. It was also contended that the land remained in the ownership of the assessee for six consecutive years and the

assessee had incurred expenses every year for agricultural operations. The AAC, however, affirmed the assessment order of the ITO and observed that the expenses incurred by the assessee were too small to be of any significance and were barely sufficient to cover the salary of a watchman. The AAC also observed that the balance-sheet of the firm showed that in the first year, the expenses were incurred for development of the land and not for carrying out any agricultural operations. Considering all these facts, the AAC held that the land was held as stock-in-trade of the assessee who was a dealer in real estates.

3. On further appeal, the Tribunal considered the facts that were placed before it and came to the conclusion that the assessee held the land as stock-in-trade of its business. The Tribunal in coming to this conclusion took note of Clause 2 of the partnership deed which provided as follows:

"The business of the firm shall be that of acquiring immovable properties by purchase or otherwise and to sell and let out the same and such other business or trade ancillary or incidental thereto or any new line of trade or venture as the partners may mutually agree upon from time to time."

4. The assessee had been dealing in immovable properties and the profits were being assessed to tax as business income. The Tribunal took note of the balance-sheet of the assessee and found that the land in question along with another plot of land at No. 6, Palm Avenue. Calcutta, had been shown under the heading "Land". It was not the assessee''s case that the plot of land at No. 6, Palm Avenue, Calcutta, was a capital asset. In fact, that plot of land was sold away and the sale proceeds were not claimed as capital receipt. Considering all these facts, the Tribunal was of the opinion that whether any agricultural operations were undertaken or not was quite immaterial. The Tribunal found that there was no evidence to show that the land was not purchased as part of the assessee''s normal trading activities.

5. Whether the land was held as stock-in-trade or not is essentially a question of fact. The Tribunal has considered the entire evidence that was placed before it. The finding of the Tribunal is not vitiated by any error of law. The assessee has not raised any specific question challenging the finding of the Tribunal as erroneous or perverse.

6. We do not find any infirmity of law in the order of the Tribunal. In fact, there is hardly any question of law involved in this matter. The Tribunal after considering all the facts that were placed before it came to the conclusion that the land that was sold was held by the assessee as its stock-in-trade and so the surplus arising out of the sale of the land was the assessee''s business income. In our view, the Tribunal has not committed any error of law and the question that has been referred is answered in the affirmative and against the assessee.

7. Each party will pay and bear its own costs.

Satish Chandra, C.J.

8. I agree.

