
(1981) 03 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No"s. 87 of 1976 and 56 and 57 of 1978

Harbans Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-03-1981

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1981) 23 CTR 335 : (1981) 132 ITR 77

Hon'ble Judges : S.P. Goyal, J;J.V. Gupta, J

Bench : Division Bench

Advocate : G.C. Sharma, D.V. Sehgal, D.K. Gupta and E.D. Helms, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

S.P. Goyal, J.—This judgment will dispose of three Income Tax References Nos. 87 of 1976, 56 and 57 of 1978 as all of them involve identical questions of law and relate to the same assessee.

2. The assessee purchased 35 kanals of agricultural land for Rs. 25,500 in three lots during the financial year 1962-63, and 48 kanals 13 marlas, in four lots for Rs. 43,150 during the year 1963-64. Soon after the purchase, he developed the said land into plots and started selling them in the year 1964, the first sale having been made on March 2, 1964.

3. During the assessment year 1970-71, the subject-matter of ITR No. 87 of 1976, the assessee sold two plots measuring 266.6 square yards each and one plot of 600 square yards for an amount of Rs. 18,733 and earned a profit of Rs. 13,939 thereon. Similarly, in the assessment years 1971-72 and 1972-73, the subject-matter of I.T. References Nos. 56 and 57 of 1978, he sold 3,474.5 square yards for Rs. 55,730 and 1,807 square yards for Rs. 33,270, respectively. The profits from the sales were shown by the assessee in the returns as capital gains but the ITO being of the view that the assessee was carrying on business of sale and purchase of land assessed them as business income. The order of the ITO was confirmed, on appeal, by the AAC as well as the Income Tax Tribunal. On

applications by the assessee u/s 256(1), the I.T. Act, the following questions have been referred to this court :

Assessment year 1970-71

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the transactions in question were an adventure in the nature of trade ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the profits in question of Rs. 13,939 were assessable in the hands of the assessee as "business income" ?"

Assessment year 1971-72

"Whether, on the facts and in the circumstances of the case, income resulting from the sale proceeds of Rs. 55,730 of land measuring 3,474.5 square yards of land during the accounting year 1970-71, out of 17 kanals 12 marlas of agricultural land purchased by the assessee constitute business income of the assessee ?"

Assessment year 1973-74

"Whether, on the facts and in the circumstances of the case, income resulting from the sale proceeds of Rs. 33,270 of land measuring 1,807 sq. yards of land during the accounting year 1972-73 out of 87 kanals 12 marlas of agricultural land purchased by the assessee constitutes business income of the assessee?"

4. Though apparently two questions have been referred in I.T. Reference No. 87 of 1976, the learned counsel for the assessee concedes that the 2nd question has no independent existence and it would be covered by the answer on question No. 1. So, the sole question involved in all the three references is as to whether the profit earned by the sale of the agricultural land during the concerned accounting years constitute business income of the assessee or is in the nature of capital gains.

5. The criteria to determine as to when a receipt by sale of land would be a revenue receipt or capital receipt was laid down by the Supreme Court in G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax, , in the following terms (headnote) :

"If a person invests money in land intending to hold it, enjoys its income for some time, and then sells it at a profit, it would be a clear case of capital accretion and not profits derived from an adventure in the nature of trade. Cases of realisation of investments consisting of purchase and resale, though profitable, are clearly outside the domain of adventures in the nature of trade. In deciding the character of such transactions several factors are relevant, such as, e.g., whether the purchaser was a trader and the purchase of the commodity and its resale were allied to his usual trade or business or incidental to it ; the nature and quantity of the commodity purchased and resold ; any act subsequent to the

purchase to improve the quality of the commodity purchased and thereby make it more readily resaleable, any act prior to the purchase showing a design or purpose, the incidents associated with the purchase and resale ; the similarity of the transaction to operations usually associated with trade or business ; the repetition of the transaction ; the element of pride of possession. A person may purchase a piece of art, hold it for some time and if a profitable offer is received sell it. During the time that the purchaser had its possession he may be able to claim pride of possession and aesthetic satisfaction ; and if such a claim is upheld that would be a factor against the transaction being in the nature of trade. The presence of all these relevant factors may help the court to draw an inference that a transaction is in the nature of trade, but it is not a matter of merely counting the number of facts and circumstances pro and con ; what is important to consider is their distinctive character. In each case, it is the total effect of all relevant factors and circumstances that determines the character of the transaction.

In cases where the purchase has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding the property for himself or otherwise enjoying or using it, the presence of such an intention is a relevant factor and unless it is offset by the presence of other factors it would raise a strong presumption that the transaction is an adventure in the nature of trade. Even so, the presumption is not conclusive ; and it is conceivable that, on considering all the facts and circumstances in the case, the court may, despite the said initial intention, be inclined to hold that the transaction was not an adventure in the nature of trade. The presumption may be rebutted."

6. Again, in *Raja J. Rameshwar Rao Vs. Commissioner of Income Tax, Hyderabad*, it was ruled (headnote) :

"Even a single venture may be regarded as in the nature of trade or business. When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it, but in parcels, he is dealing with land as his stock-in-trade, he is carrying on business and making a profit."

7. The present cases are, therefore, fully covered by the rule laid down in *Raja J. Rameshwar Rao Vs. Commissioner of Income Tax, Hyderabad*, because here also, according to the facts found, the assessee soon after purchasing the land developed it into residential sites and started selling plots within two years of the purchase. The conclusion on these facts would be irresistible that he acquired the land with a view to selling it later on after developing it, and the activity, therefore, can be described only as business venture.

8. The learned counsel for the assessee, on the other hand, relied on *Deep*

Chandra and Co. Vs. Commissioner of Income Tax, , Michael A. Kallivayalil Vs. Commissioner of Income Tax, , Janab Abubucker Sait Vs. Commissioner of Income Tax, Madras, and COMMISSIONER OF Income Tax, ASSAM Vs. JALANNAGAR TEA ESTATE (PRIVATE) LTD., ASSAM., . However, the conclusion arrived at in all these cases are based on their peculiar facts and these decisions, therefore, have no bearing on the facts of the present case. In Deep Chandra and Co. Vs. Commissioner of Income Tax, an agreement to purchase land was entered into some time long before the year 1943 because the suit to enforce this agreement was dismissed in April, 1943. It was only in the year 1956 that the assessee obtained permission from the town planner, parcelled out the land and sold several plots thereafter in the years 1937 to 1950. On these facts, it was held that the activity of parcelling out the land and thereafter selling them was designed to enhance the value of the land in which the money was invested and that simply because of the steps taken for receiving the higher price, the transactions could not be taken to be a trade. In Michael A. Kallivayalil Vs. Commissioner of Income Tax, the assessee who owned thousand acres of land derived income by owning and managing the estate. In 1958 he entered into an agreement to buy 575 acres of land and borrowed money for making the purchase. Subsequently he sold 225 acres out of it and made a profit. The Tribunal held that the sale transaction amounted to an adventure in the nature of trade but its decision was reversed by the court with the following observations (headnote) :

"The fact that the assessee had borrowed money for purchasing the land or that he intended to resell it at profit would not necessarily mean that the transaction was an adventure in the nature of trade. The assessee who bought land was an estate owner who already owned a thousand acres of land and was making his living by managing estates. He never dealt in purchases of land or estates. It was not shown that he had any business or trade. The bulk of the estates purchased had been retained by him. On the facts and circumstances of the case, the Tribunal was not justified in holding that the sale of the land by the assessee represented an adventure in the nature of trade."

9. In COMMISSIONER OF Income Tax, ASSAM Vs. JALANNAGAR TEA ESTATE (PRIVATE) LTD., ASSAM., the assessee-company purchased in the year 1944 lands measuring 5,308 bighas and in the year 1952 entered into an agreement with a development company to sell 1,669 bighas out of the said land for the purpose of developing a residential colony. The profits received by the said sale were held to represent a capital receipt by the Tribunal as well as by the High Court on the ground that when the assessee acquired the property in the year 1944, it had no intention of selling it or to develop it into plots and dispose of them on profit.

10. In Janab Abubucker Sait Vs. Commissioner of Income Tax, Madras, the assessee purchased 9 acres of land on August 9, 1945, and sold it on April 30, 1947, and made a profit of Rs. 66,000 thereby. This transaction was held to be

an adventure in the nature of trade by the Tribunal but its finding was reversed by the High Court. It is, therefore, evident that the decisions, in all the four cases relied upon by the learned counsel for the assessee, are based on their peculiar facts and in all of them there was no material to hold that the assessee had purchased the land with an intention to resell it for profit either as agricultural land or as building sites after developing the same. On the other hand, in the present case, there can be no doubt that the assessee had from the very beginning an intention to develop the land and sell it out after dividing it into small residential plots. The activity thus carried on, as held in *Raja J. Rameshwar Rao Vs. Commissioner of Income Tax, Hyderabad*, would be nothing but a venture in the nature of trade or business.

11. Consequently, the questions in all the three references are answered in the affirmative, against the assessee and in favour of the revenue. No costs.