(1999) 08 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 889 of 1992 24 August 1999

INDRAJIT and CO. APPELLANT

Vs

GIRIJAN CO-OPERATIVE CORPN. LTD. RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 206C, 44AC

Citation : (2000) 107 TAXMAN 179 : (1999) 107 TAXMAN 179

Hon'ble Judges : Dr. B.P. Saraf, J;D.K. Deshmukh, J;B.P. Saraf, J

Bench : Full Bench

Advocate : K. Shivram Keshar and V.H. Patil, for the Petitioner, for the Appellant;

Judgement

Saraf, J.

By this writ petition, the petitioner seeks to challenge the constitutional validity of section 44AC and section 206C of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''). The petitioner contends that these two-sections are violative of the fundamental rights of the petitioner contained in article 14 of the Constitution.

2. We have heard Mr. Keshar, the learned counsel for the petitioner. The above controversy sought to be raised by the petition in this case is no more res integra in view of the decision of the Supreme Court in Union of India and another etc. etc. Vs. A. Sanyasi Rao and other etc. etc., . In that case also, the validity of this very same provision was challenged. The Supreme Court said that there was nothing in the legislative measure to offend article 14 of the Constitution. It was held:

... The charge for the levy of the income that accrued or arose is laid by the charging section, viz., sections 5 to 9 and not by virtue of section 44AC or section 206C. The fact that the Income Tax is levied at a flat rate or at an earlier stage will not in any way alter the nature of character of the levy since such matters are completely in the realm of legislative wisdom. We hold that what is brought to tax, though levied with reference to the purchase price and at an earlier point, is nonetheless income liable to be taxed under the Income Tax Act. We repel the plea by the assessees to the contrary.

Dealing with the challenge to the validity of sections 44AC and 206C on the ground of violation of article 14 of the Constitution, it was observed:

Considered in the light of the practical difficulties envisaged by the revenue to locate the persons and to collect the tax due in certain trades, if the Legislature in its wisdom thought that it will facilitate the collection of the tax due from such specified traders on a ''presumptive basis'', there is nothing in the said legislative measure to offend article 14 of the Constitution. In the light of the legal principles stated above, we are unable to hold that section 44AC, read with section 206C, is wholly hit by article 14 of the Constitution of India.

It was further held that section 44AC is a valid piece of legislation and is an adjunct to and explanatory to section 206C. It does not dispense with the regular assessment as provided in accordance with sections 28 to 43C of the Act.

3. The above decision of the Supreme Court squarely covers the controversy of this writ petition. Following the same, this writ petition is dismissed with no order as to costs.

