

(1986) 09 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 144 of 1986

Jagwansh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 2(14)

Citation : (1987) 167 ITR 283

Hon'ble Judges : Ravi S. Dhavan, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant;

Judgement

K.C. Agrawal, J.—Jagwansh Kumar has challenged the validity of Sub-clause (iii) (b) of Clause (14) of Section 2 of the Income Tax Act, 1961.

2. Section 3 of the Finance Act, 1970, substituted Section 2(14)(iii) from April 1, 1970, by a new provision, the relevant portion of which is reproduced below :

"3. Amendment of Section 2.--In Section 2 of the Income Tax Act,--

(a) in Clause (14), for Sub-clause (iii), the following sub-clause shall be substituted, namely :--

" (iii) agricultural land in India, not being land situate--...

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette

3. The object of this amendment is to bring within the term "capital asset", agricultural land situated within any municipality (whether known as a municipality, municipal corporation, notified area committee, town area

committee, town committee or by any other name) or a cantonment board having a population of 10,000 or more. Further, agricultural land situated in areas lying within a distance not exceeding eight kilometres from the local limits of such municipalities, could also be covered by the amended definition of "Capital asset" if such areas are, having regard to the extent and scope for their urbanisation and other relevant considerations, notified by the Central Government in that behalf. The effect will be that capital gains earned from the transfer of agricultural land covered by the aforesaid clause will be liable to Income Tax for the assessment year 1970-71 and subsequent years.

4. The petitioner's main contention was that profits or gains arising from transfer of lands which are used for agricultural purpose is revenue derived from such land within the meaning of Section 2(1)(a) and is, therefore, agricultural income within the meaning of Section 2(1) and not eligible to capital gains tax by Parliament. The main reliance placed by the petitioner was on *Manubhai A. Sheth and others Vs. N.D. Nirgudkar*, 2nd Income Tax Officer, A-II Ward, Bombay and another, .

5. Contrary view has been taken in *Ambalal Maganlal Vs. Union of India and Another*, and in *B.S. Jayachandra Vs. Income Tax Officer and Another*, .

6. Apart from the decision in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar*, 2nd Income Tax Officer, A-II Ward, Bombay and another, , learned counsel for the petitioner relied on a number of other rulings for the various propositions advanced before us, but we will presently show that, on the facts, we are not called upon to decide those it questions. The contention of the petitioner could hold the field provided was established that the land on which capital gains is being charged from the petitioner was being used for agricultural purposes but since it is found that it was not being used for agricultural purpose on the date on which it was transferred, the question of validity of Section 2(14)(iii) would not arise.

7. The brief facts of this case are these. The petitioner-assessee, who is an individual for the purpose of the Income Tax Act, purchased 9 bighas 11 biswas of land by means of a court auction in December, 1967, for Rs. 1,460. He sold 2 bighas 10 biswas. 11 biswas is for Rs. 40,000 on June 15, 1970. He further sold the balance land for Rs. 72,000. The petitioner was served with two notices u/s 148 of the Income Tax Act for the assessment year 1971-72, one by the Income Tax Officer, "D" Ward, and another by the Income Tax Officer, " B " Ward, Saharan-pur. Returns were filed in compliance with the said notices showing nil income for the assessment year 1971-72. The Income Tax Officer, by the order dated March 18, 1975, assessed the petitioner in respect of the capital gains at Rs. 16,300. For the assessment year 1972-73, the petitioner was served with a notice u/s 139(2) by the Income Tax Officer, "B" Ward, Saharaapur. In the return filed against this notice as well, the petitioner showed his income as nil. The Income Tax Officer assessed the assessee on the net capital gains of Rs. 41,540, vide assessment order dated March 18, 1975. The petitioner filed appeal in

respect of the assessment year 1971-72 before the Appellate Assistant Commissioner. The appeal was dismissed. As against the decision in appeal by the Appellate Assistant Commissioner, the petitioner preferred a second appeal before the Income Tax Appellate Tribunal, Delhi Bench, Delhi. The second appeal was also dismissed by the order of the Appellate Tribunal dated January 1, 1982.

8. The petitioner argued before the Appellate Tribunal that the piece of land sold by him on June 15, 1970, was not a capital asset within the meaning of Section 2(14)(iii) of the Income Tax Act and relied upon the decision of Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, . This argument was repelled by the Tribunal. It held that in Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, , the Bombay High Court laid down that "agricultural land" as occurring in Section 2(14)(iii) should be so read down that it should not include land used for agricultural purposes. It was, therefore, held by the Tribunal to be necessary for applying the ratio of Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, that the land must have been used for agricultural purposes and the income or profit arising on sale of such land will partake of the character of agricultural income and, as such, would be exempt from Income Tax u/s 19(1) of the Income Tax Act.

9. On the evidence, the Tribunal found that :

"The said aspects are not relevant for proving that the land in question was used for agricultural purposes as aforesaid at any time during the year preceding the sale dated June 15, 1970. We, therefore, hold that the assessee, in law, derives no benefit from the ruling in the case of Manubhai A. Sheth and that the land in question cannot be said not to be a capital asset within the meaning of Section 2(14)(iii).

10. The petitioner thereafter filed a writ petition challenging this order in the High Court. The writ petition was dismissed on the ground that since the petitioner had an alternative remedy of applying for reference u/s 256, the writ was not maintainable. The petitioner, thereafter, filed an application u/s 256(1) of the Income Tax Act. The application had been rejected by the Appellate Tribunal on April 15, 1982.

11. On behalf of the Revenue, it was argued that since the land was not being used for agricultural purposes, the profits or gains arising from transfer of land could not be revenue and, as such, was not agricultural income u/s 2(a). Consequently, the profits earned by the sale of the land were capital gains and were liable to tax.

12. The petitioner, in fact, did not claim the land to be an agricultural land either before the Income Tax Officer or before the Appellate Assistant Commissioner. For the first time, he raised this controversy before the Income Tax Appellate Tribunal that the land in question was agricultural land and, as such, the income earned by the sale was not a "capital asset" within the meaning of Section 2(14)

(iii) of the Act. The Income Tax Appellate Tribunal while disposing of the appeal rejected his claim and recorded a finding that there was no material to show that the petitioner carried on any agricultural operations or incurred any expenditure in connection therewith since December, 1967. This decision of the Income Tax Appellate Tribunal decides the controversy about the character of the land finally. Since, according to this decision, the land was not being used for agricultural purposes, the profit earned by its sale in June, 1970, was not agricultural income. Consequently, there is no occasion to decide the validity of Section 2(14)(iii) of the Income Tax Act.

13. The petitioner's counsel urged that this court has to decide the controversy about the nature of land on its own on the basis of the evidence filed on his behalf and that it should not be led away by the decision given by the Income Tax Appellate Tribunal. He submitted that before the Income Tax Appellate Tribunal, the petitioner could not challenge the validity of Section 2(14)(iii) and, as such, the finding recorded about the character of land by the Tribunal is not decisive of the controversy.

14. The submission made by the petitioner's counsel cannot be accepted inasmuch as the question as to whether the land was agricultural and the income earned from it was agricultural income, is one of fact. This question has been decided against the petitioner by the Income Tax Appellate Tribunal. The Income Tax Act is a special Act dealing with the levy of tax on income or capital gains. The finding given by the Income Tax Appellate Tribunal is binding on this court. As against such a finding, the remedy of the petitioner was to apply for reference under Sub-section (2) of Section 256. The application made for this purpose before the Tribunal has failed. We cannot shut our eyes to the finding of the Tribunal.

15. It was laid down by the Bombay High Court that the expression "agricultural land" as occurring in Section 2(14)(iii) should be so read as not to include land used for agricultural purposes. Reasoning of the Bombay High Court was that if lands were used for agricultural purposes, income or profit arising on sale of such land would partake the character of agricultural income within the meaning of Section 2(1)(a) and would, as such, be exempt from Income Tax u/s 10(1) of the Income Tax Act. Even the decision given by the Bombay High Court in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar*, 2nd Income Tax Officer, A-II Ward, Bombay and another, does not assist the petitioner. Even on merits, on the basis of the papers filed, we are not satisfied that the land could be considered as agricultural on the date when it was sold.

16. For the reasons given above, the writ petition fails and is dismissed with costs. Interim stay order passed by this court is withdrawn.