

(1964) 08 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No, 221 of 1963

Krishna Iyer

APPELLANT

Vs

Income Tax Officer (Addl.) Ernakulam and Another

RESPONDENT

Date of Decision : 14-08-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 2(1), 2(4A), 30, 33, 66

Citation : (1965) KLJ 28

Hon'ble Judges : M.S. Menon, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : S. Easwara Iyer L. Gopalakrishnan Potti, for the Appellant; C.T. Peter, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.—This petition under Article 226 of the Constitution of India challenges the correctness of Exts. P. 1, P. 2 and P. 2 (a) in so far as they relate to the assessment of capital gains. Ext. P. 1 is the order of the Commissioner of income tax, Ernakulam, dismissing the revision petitions filed by the petitioner against Exts. P. 2 and P. 2 (a). Ext. P. 2 is the assessment order in respect of the assessment year 1960-61 (accounting period: the twelve months ended on 31-3-1960) and Ext. P. 2 (a) is the assessment order in respect of the assessment year 1961-62 (accounting period: the twelvemonths ended on 31-3-1961.). The petitioner purchased in 1959 a plot of land measuring about 57 cents with a building and some trees thereon for Rs. 67,400/-. He sold portions of the land in the accounting periods relevant to the assessment years with which we are concerned; and the income tax Officer computed the capital gains at Rs. 5,500/- for the assessment year 1960-61 and at Rs. 10,500/- for the assessment year 1961-62.

2. Section 12B of the Indian income tax Act, 1922, provides that tax shall be payable under the head "Capital gains" in respect of any profits or gains arising

from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and that such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or relinquishment or transfer took place. The contention of the petitioner is that the land concerned is agricultural land and that as a result the section is not attracted to the profits or gains arising from the sales he made.

3. The expression "capital asset" is defined in section 2 (4A) of the Act. According to that definition "capital asset" means property of any kind held by an assessee, whether or not connected with his business, profession or vocation, but does not include, among other things, "any land from which the income derived is agricultural income."

4. The expression "agricultural income" is defined in section 2(1) of the Act. It is clear from the definition that the primary condition that must be satisfied is that the land in question should be used for agricultural purposes. The terms "agricultural" and "agricultural purposes", however, have not been defined in the Act.

5. Ext. P.1 says:

"In this case we are concerned with the question whether a small plot of land consisting of 57 cents in a very important locality of a municipal town is agricultural land or not. Obviously, the petitioner would not have purchased agricultural land measuring 57 cents at a rate of about Rs. 1,18,000/-per acre when even the best cocoa nut garden in the most fertile areas of this State would not have fetched even Rs. 15,000/- per acre in the year 1959. Similarly if the land is one which is used for agriculture it would not have been sold at a rate of Rs. 2 lakhs per acre when the petitioner sold them. The petitioner's contention that the income from this land is solely agricultural is also not correct as he was getting an annual rent of Rs, 600/- from the building on this plot;"

points out that there were only 12 coconut palms, 17 arecanut palms, 2 mango trees and 5 other trees in the property, and holds that the land concerned is not agricultural in character but a "capital asset" within the meaning of that expression as defined in section 2 (4A) of the Act. We are in agreement with the conclusion reached by the Commissioner.

6. Whether a piece of land is agricultural in character or a capital asset as defined in section 2 (4A) of the Act is essentially a question of fact. It is conceded that there is nothing on record to show the extent of the income that was being received from the few trees on the property. We must say that we find it impossible to hold that 57 cents of land on the Mahatma Gandhi Road, the busiest thoroughfare of this town, with a building thereon fetching a monthly rent of Rs. 50/- is not a capital asset as defined in section 2 (4A) of the Act, simply because there are 12 coconut palms, 17 arecanut palms, 2 mango trees and 5 other trees thereon yielding some income, but the extent of which is not known.

7. There is a further contention. It is submitted that as the building was in one of the plots sold in March 1960 there was no building on the portion that remained and that as a result the sales effected subsequent to March 1960 should in any case be considered as sales of agricultural land. We do not agree. In our view, whether there was a building or not, the entire plot should be considered as non-agricultural land and the profit or gains derived by the petitioner from the sales he effected should be considered as assessable u/s 12B of the Act.

8. We must also add that there was nothing to prevent the petitioner from filing appeals under sections 30 and 33 of the Act and then agitating the controversy u/s 66 of the Act. We think that this is the way in which he should have brought up the matter before this Court, and not by a petition under Art. 226 of the Constitution. In the light of what is stated above this petition has to be dismissed, and we do so. No costs.