

(2001) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : R.C. No. 163 of 1991 13 September 2001 & Referred Case No. 163 of 1991

M. Ramanamma

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (2002) 122 TAXMAN 246

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Full Bench

Advocate : J.V. Prasad, for the Assessee, for the Appellant;

Judgement

S.R. Nayak, J.

The Tribunal, Hyderabad Bench "A", has referred the following two questions to this court at the instance of the assessee for the assessment years 1966-67 to 1969-70 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the reopening of the assessments fell u/s 147(a) and not u/s 147(b) of the Income Tax Act, 1961 and, therefore, was not barred by the limitation ?

2. Whether, on the facts and in the circumstances of the case and on a correct application of the tests laid down by the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, the Tribunal is correct in law in holding that the lands of the assessee acquired by the government under the Land Acquisition Act were non-agricultural in character and were capital assets at the relevant point of time and, therefore, gain arising out of the receipt of the compensation for the compulsory acquisition of those lands was assessable to tax under the head "Capital gains"?"

2. At the instance of the revenue, the following question is referred :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the gain accruing to the assessee from the compensation payable for the compulsory acquisition of herlands situate within the limits of Visakhapatnam Municipality are to be assessed under the head "Capital gains" and not under the head "Income from business"?"

Although the assessee was served with notice, she remains unrepresented. Therefore, there is no need to opine on those two questions referred to us at the instance of the assessee.

3. This takes us to the question referred to this court at the instance of the revenue. The Income Tax Officer held that the gains accrued to the assessee from the compensation she received out of the compulsory acquisition of lands amount to income from business. This opinion was formed by the Income Tax Officer taking into account the following factors :

- (a) The assessee had no knowledge of the location of the lands and the identity of the persons from whom she purchased which does not led credence to her contention that she purchased the land only to do agriculture;
- (b) She never carried on agricultural operations in those lands;
- (c) The lands were purchased with an intention to sell them as house sites in pursuance of which she not only sold away sites but also a lay out prepared;
- (d) She purchased the lands being fully aware of the acquisition proceedings concerning those lands, the real object being to get profit out of the acquisition proceedings as borne out by the subsequent events.

4. The Tribunal referring to the grounds stated by the Income Tax Officer to hold as above has opined that though the assessee purchased the land in question with an intention to sell it at a future point of time, but the subsequent conduct of the assessee clearly established that the land was not acquired by the assessee as a venture in trade. The Tribunal placing reliance on the judgments of the Supreme Court in Janki Ram Bahadur Ram Vs. Commissioner of Income Tax, Calcutta, and G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax, , held that the profits arising from the payment of compensation from the acquisition of lands should be assessed under the head "Capital gains" and not under the head "Business".

5. The question referred to this court at the instance of the revenue is a mixed question of fact and law. The only thing to be seen is whether the finding recorded by the Tribunal is based on some acceptable evidence or perverse. The learned Tribunal has opined that the assessee after purchase of the land did not resort to any action or acts from which it could be concluded that the assessee acquired the land as a venture in trade or business. This conclusion is reached by the Tribunal on the ground that after purchase, the assessee had not developed the land into house sites, the assessee did not prepare and submit any lay-out to the municipality for approval, she did not advertise sale of any plots. It is also

pointed out by the Tribunal that the assessee is a widow and dependant upon others to look after her properties and to manage her affairs. This is one of the strong circumstances cited by the Tribunal in support of its conclusion. Therefore, it cannot be said that the finding recorded by the Tribunal on a mixed question of fact and law is perverse or without any basis. If that is so, it is well-settled by a catena of decisions of the Apex Court and this court that such a finding cannot be upset by this court lightly. The judgments cited by the learned counsel for the revenue in Commissioner of Income Tax, Nagpur Vs. Sulej Cotton Mills Supply Agency Ltd., Dalmia Cement Ltd. Vs. Commissioner of Income Tax, New Delhi, and G. Venkataswami Naidu & Co.s case (supra) are of no help to the revenue as they are distinguishable on facts.

6. Despite service of notice, the assessee remains unrepresented. Therefore, we decline to answer the questions referred to this court at the instance of the assessee and we answer the question referred at the instance of the revenue against the revenue and in favour of the assessee. No cost. R.C. is disposed of accordingly.