
(1989) 06 KAR CK 0050
In the Karnataka High Court
Case No : IT Reference Case No. 211 of 1982

Ramkumar Mills (P.) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-06-1989

Acts Referred:

Citation : (1989) 47 TAXMAN 125

Hon'ble Judges : S. Rajendra Babu, J;M. Rama Jois, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Judgement

M. Rama Jois, J.—This is a reference made by the Tribunal, Bangalore Bench, u/s 256(1) of the income tax Act, 1961 ("the Act"). The question of law referred for our opinion reads: Whether for purposes of section 22 of the income tax Act, 1961 the ownership of property is transferred only by execution and registration of sale deed and not by other acts such as delivering vacant possession and giving all rights of interest in the property including the right of realisation of rent?

The relevant facts are these: The assessment year is 1978-79. The assessee being the owner of certain industrial sheds at Ahmedabad, had leased them to one Y.G. Panduranga Setty and four others, from 31-7-1974 for a period of 98 years on an annual rent of Rs. 35,000. The assessee with the consent of the lessee entered into an agreement on 1-9-1975 with a partnership firm styled Lakshmi Commercial Corpn. for the sale of the property for a consideration of Rs. 4,20,000. In part performance of the agreement the assessee delivered vacant possession of the property to Lakshmi Commercial Corpn. giving the firm all rights, title and interest which the assessee had in the property including the right to collect the rent from the property. The assessee could not execute the sale deed so as to bring about the transfer of property in favour of Lakshmi Commercial Corpn. The question raised by the assessee before the ITO was that

the income from the said property was not chargeable to tax at the hands of the assessee. The assessee also invoked the provisions of section 53A of the Transfer of Property Act, 1882 and contended that in part performance of the contract for sale, the possession of the property had been handed over to Lakshmi Commercial Corpn. and the assessee retained no right to receive any income from the property and, therefore, the income from that house property was not chargeable to tax under the Act. The claim of the assessee was negated by the ITO. He held that in the eye of law the assessee was the owner of the property and, therefore, it was chargeable to tax u/s 22 of the Act. The AAC also held that the transfer of immovable property of the value of Rs. 100 and above could be only by means of registered instrument and in the absence of such an instrument, the assessee continued to be the owner of the property and, therefore, liable to pay tax. The assessee appealed to the Tribunal. The Tribunal also affirmed the view taken by the ITO and the AAC. Thereafter, at the instance of the assessee, the question set out earlier, had been referred for our opinion.

2. The learned counsel for the revenue submitted that in view of the ratio of the decision in *Late Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth Tax, Hyderabad*, the question has to be answered in the affirmative and against the assessee.

3. The question for consideration in *Nawab Sir Mir Osman Ali Khan's* case (supra) was, whether under the provisions of the Wealth-tax Act, 1957 ("the 1957 Act") a property in respect of which consideration had been received and the possession had been handed over to the intending purchaser, though sale deed was not executed, was property belonging to the person concerned and, therefore, liable to wealth-tax under the provisions of the 1957 Act. The expression "net wealth" has been defined u/s 2(m) of the 1957 Act, which reads thus:

Definitions."- In this Act, unless the context otherwise requires-

(a) to (l) ****

(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date,...

The Supreme Court on an interpretation of the above provision held that the properties in respect of which registered sale deeds had not been executed, though consideration for sale had been received and possession had been handed over to the purchaser, legally does not belong to the vendee and it continues to belong to the vendor.

From the above decision it is clear that the Supreme Court held that notwithstanding the fact a person had entered into an agreement to sell his

property in favour of another and had also received full consideration and handed over possession of the property to the vendee for the purposes of the 1957 Act, the property continues to belong to the vendor if a registered instrument of sale has not been executed. It is true that the Supreme Court observed that they were confining the interpretation to the provisions of section 2(m) particularly having regard to the words "belonging to" used in the said provision. But in our opinion the reasoning and the basis on which the Supreme Court held that in such circumstances the property continues to belong to the vendor equally holds good for the purpose of interpretation of section 22 of the 1961 Act. that provision reads:

Income from house property.-- The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income tax, shall be chargeable to income tax under the head Income from house property.

The above section clearly provides the annual value of property consisting of any building or lands appurtenant thereto of which the assessee is the owner, except to the extent provided in the provision, shall be chargeable to income tax under the head "Income from house property". Though a vendee who has entered into an agreement to purchase the property has paid the consideration and has also secured possession, still he does not become the owner of the property until and unless a registered sale deed is executed. He might be entitled to claim certain right u/s 53A of the Transfer of Property Act, but still he does not become the owner. For the purpose of section 22 of the 1961 Act, all that we have got to see is, whether the assessee continues to be the owner of the property in question or has ceased to be the owner, and the very reasoning given by the Supreme Court in Nawab Sir Mir Osman Ali Khan's case (supra) to hold that the property belongs to the vendor so long as a registered instrument has not been executed, is also sufficient to hold that in the present case the assessee continued to be the owner of the property and, therefore, the view taken by the authorities is right.

4. The learned counsel for the assessee, however, relied on the judgment of the Supreme Court in R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, In the said decision, the question for consideration was, whether the assessee in that case was liable to pay income tax from his property situated in Pakistan, which had vested in the Custodian of Evacuee Property in Pakistan. The Supreme Court on interpretation of section 9 of the Indian income tax Act, 1922 ("the 1922 Act") held that the owner for the purpose of liability to pay the tax, must be the person who exercises the rights of the owner in his own right. On interpretation of the provisions of section 6(1) of the Pakistan (Administration of Evacuee Property) Ordinance, 1949, the Supreme Court held that the property vested in the Custodian u/s 6(1) and, there- fore, the assessee, whose property so vested in

the Custodian and who could not exercise any right in relation to that property except with the consent of the Custodian, could not be considered as "owner" for the purpose of section 9.

5. The learned counsel for the assessee also relied on the judgment of the Punjab and Haryana High Court in *Smt. Kala Rani Vs. Commissioner of Income Tax*, That was a case in which the question for consideration was, whether a person who had secured possession of a property pursuant to an agreement to sell after paying full consideration but without there being a registered sale deed, was liable to tax under the provisions of the Act. The Punjab High Court held that as the assessee had occupied the property after the execution of the agreement of sale in his favour, he was in a position to earn income from the property sold to him and further he had paid the entire consideration to the vendor at the time of the execution of the agreement and no payment was required to be made or made at the time of actual registration of the document and, therefore, the income from such property, even during the period prior to the execution of sale deed, was liable to tax at his hands. This decision does support the contention of the assessee for the reason that if the purchaser who was put in possession of the property could be regarded as owner liable to tax u/s 22, it follows that the seller could not be regarded as owner. The decision of the Patna High Court in *Addl. Commissioner of Income Tax Vs. Sahay Properties and Investment Co. (P.) Ltd.*, is also similar to the decision in *Smt. Kala Rani's* case (supra). The vendee in that case who had secured possession of the property after payment of sale consideration pursuant to an agreement of sale, but in whose favour there was no registered sale deed, was regarded as owner for the purposes of section 22. The Allahabad High Court has also taken a similar view in the case of *Additional Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd.*, .

6. There are several other decisions of other High Courts in which a contrary view has been taken-. However, according to the learned counsel for the assessee, in view of the ratio of the decision of the Supreme Court in *R.B. Jodha Mal Kuthiala's* case (supra), the question referred has to be answered in favour of the assessee. The learned counsel for the revenue, however, contends that the decision in *R.B. Jodha Mal Kuthiala's* case (supra) rendered under the provisions of the Administration of Evacuee Property Ordinance, according to which the property vested in the Custodian, is not apposite to the question arising for consideration in this case.

7. I shall now proceed to consider the validity of the rival contentions. Prior to the decision of the Supreme Court in *R.B. Jodha Mal Kuthiala's* case (supra) in the case of *Commissioner of Income Tax Vs. Ganga Properties Ltd.*, the question was considered by the Calcutta High Court. The Calcutta High Court held that in the case of sale of immovable property, a registered document is necessary to give effect to the sale and the sale takes effect only from the date of execution of the document and "that in Indian law beneficial ownership is unknown and there is only one owner, namely, the legal owner and that the expression "Income from

property" used. in sections 6 and 9 of the 1922 Act, refers to the income of the legal owner of the property and he is the only person assessable to tax on the basis of the bona fide annual value thereof. Similar view was taken by the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Ashaland Corporation, after the decision in R.B. Jodha Mal Kuthiala's case (supra) though there is no reference to that decision. There is, however, the decision of the Bombay High Court in the case of Commissioner of Income Tax, Bombay City III Vs. Zoroastrian Building Society Ltd., in which a similar view has been taken after rejecting the contention that the decision of the Calcutta High Court in Ganga Properties Ltd.'s case (supra) and decisions of other High Courts taking similar view were impliedly overruled by R.B. Jodha Mal Kutiala's case (supra). The relevant portion reads:

It was, however, strongly urged by Mr. Kolah that these decisions of the Calcutta High Court, Bombay High Court and the Delhi High Court should be regarded as impliedly overruled by a later decision of the Supreme Court in the case of R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, In this case, the Supreme Court had occasion to consider the provisions of the Pakistan (Administration of Evacuee Property) Ordinance, 1949.... The Supreme Court has analysed with meticulous care the provisions of the Evacuee Ordinance and has considered the effect thereof. It is pointed out that the Ordinance starts by saying that it is an Ordinance to provide for the administration of evacuee property and not management of evacuee property. The expression i administration, in relation to an estate, in law means management and settling of that estate. It is a power to deal with the estate. The evacuee could not take possession of his property. He could not lease that property. He could not sell that property without the consent of the Custodian. He could not mortgage that property. He could not realise the income of the property. On the other hand, the Custodian could take possession of that property. He could realise its income. He could alienate the property and he could under certain circumstances demolish the property. All the rights that the evacuee had in the property he left in Pakistan were exercisable by the Custodian excepting that he could not appropriate the proceeds for his own use. The evacuee could not exercise any rights in that property except with the consent of the Custodian. He merely had some beneficial interest in that property. No doubt that residual interest in a sense is ownership. The property having vested in the Custodian, who had all the powers of the owner, he was the legal owner of the property. In the eye of the law, the Custodian was the owner of that property. It was upon scrutiny of the effect of the Ordinance that the Supreme Court first took the view that the Custodian should be regarded as the owner and it was in that light the test was considered whether the assessee was the person entitled to the income of that property. It will not be possible for us to divorce a test of mere receipt of income apart from vesting of the property under the Evacuee Ordinance. None of the decisions on which reliance is placed by Mr. Joshi was cited before the Supreme Court and there is nothing in the findings of

the Supreme Court which will persuade us to take the view that the said decisions should be treated as impliedly overruled. The case before the Supreme Court has not been decided upon the mere fact of having possession and the right to receive income. The entire provisions of the Evacuee Ordinance have been considered and it is after scrutiny of the provisions of the said Ordinance that the view has been taken that an evacuee assessee cannot be regarded as owner" within the meaning of section 9.

...Thus, it is quite evident from the facts of this case that even though the purchaser was put into possession with all the other rights incidental thereto, in the absence of a registered sale deed, as the value of the property exceeded Rs. 100, the transferee cannot be regarded as "owner" and, for asserting such a right, section 53A of the Transfer of Property Act was not available.

Thus, our answer to the question referred to us is in the affirmative."

[Emphasis supplied] (pp. 513-517)

8. The Delhi High Court, whose decision in R.B. Jodha Mal Kuthiala's case (supra) was upheld by the Supreme Court, itself had the occasion to consider the question with reference to the provisions of section 9 of the 1922 Act [corresponding to section 22 of the 1961 Act] in Commissioner of Income Tax, Delhi (Central) Vs. D.L.F. Housing Construction (P.) Ltd., This was, however, a case where the seller remained in possession even after execution of sale deed and the buyer was not earning any income from the property. But on principle, it makes no difference. Relying on R.B. Jodha Mal Kuthiala's case (supra) the assessee contended that he was not in a position to get the income from the property and, therefore, not liable to pay tax. The contention was negated. The relevant portion reads:

In our considered opinion, the decisions given in the case of COMMISSIONER OF Income Tax, PUNJAB, JAMMU AND KASHMIR, AND HIMACHAL PRADESH Vs. R.B. JODHAMAL KUTHIALA., - on appeal R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, do not, in any manner, come to the aid of the assessee. There, by the operation of a statute in Pakistan, the property had vested in the Custodian who had in the eye of law become its owner. It was as such that the courts declined to treat the assessee as owner within the meaning of section 9 of the 1922 Act.

A property, it was observed by the Supreme Court, cannot be owned by two persons, each one having independent and exclusive right over it. Hence, for the purpose of section 9, the owner must be that person who can exercise the right of an owner not on behalf of the owner but in his own right. Moreover, the Delhi High Court had specifically excluded cases where an assessee of his own volition chose not to earn income from the property or the circumstances did not permit

him to earn income even though he had dominion or control over the property. In such cases, section 9 of the Act was considered applicable and the property income was still assessable in his hands.

...The tax on property was attached to his ownership. It was not dependent upon the assessee enjoying any income. If it allowed the seller to still remain in possession or even had kept the premises vacant and locked, it could not escape from the levy of tax on the notional income of the property. The Bombay High Court decision in the case of D. M. VAKIL Vs. COMMISSIONER OF Income Tax., fully supports the claim of the revenue that the mere fact that the trustees or the owner could not have realised any income whatsoever from the property would not render them as not liable to pay income tax in respect of that property.

We are, therefore, in agreement with the conclusion arrived at by the Tribunal in so far as the matter raised in question No. 1 is concerned. The question is answered in the affirmative."

[Emphasis supplied.] (p. 782)

We are, therefore, in agreement with the conclusion arrived at by the Tribunal in so far as the matter raised in question No. 1 is concerned. The question is answered in the affirmative." [Emphasis supplied] (p. 782)

Thus, the Delhi High Court held that the execution of the sale deed had the effect of passing the ownership of the property to the vendee and the tax on property was attached to his ownership and it was not dependent upon the assessee enjoying any income from that property, and if the assessee had allowed the seller to still remain in possession, he could not escape from the levy of tax on the notional income from the property. The ratio of the decision is, whoever is in the eye of law the owner of the property, he is liable to pay tax u/s 22.

9. The Andhra Pradesh High Court has also taken a similar view in the case of CIT v. Nawab Mir Barkat Ali Khan 1974 Tax LR 90. The Andhra Pradesh High Court held that so long the sale deed had not been executed, the liability to pay tax on income from property does not cease; the position of such person is "owner" within the meaning of section 9 of the 1922 Act and the corresponding section, namely, section 22 of the 1961 Act. Relevant portion reads:

35. We are, therefore, satisfied that the agreement to sell does not create any beneficial ownership according to Indian law in the purchaser. Nor does it create any equitable ownership in him. It is the vendor who continues to be the owner of the properties agreed to be sold until lawfully registered sale deed is executed by him. The word "owner" in section 9 or 22 therefore must be understood in this sense and cannot be understood in any other sense. There is no justification either in the scheme of the Act or in the context or setting of section 9 or 22 for giving meaning to the term "owner" as beneficial or equitable owner which concept is not recognized in India and in fact it is specifically contrary to the

express provisions of the law. The Nizam, therefore, in spite of these agreements continues to be liable to pay tax on the income of such property u/s 9 or 22 of the Act."

[Emphasis supplied] (p. 95)

In this decision, there is no consideration of the decision of the Supreme Court in R.B. Jodha Mal Kuthiala's case (supra). Another Division Bench of the Andhra Pradesh High Court has taken a contrary view holding that in view of the ratio in R.B. Jodha Mal Kuthiala's case (supra) " a person who has parted with possession, is not owner for purposes of section 22. That decision is Commissioner of Income Tax Vs. Sahney Steel and Press Works (P.) Ltd., There is no consideration of the decisions of Bombay, Delhi and Calcutta High Courts referred to above and further there is no consideration of even the earlier Division Bench judgment of the same High Court in the case of Barkat Ali Khan (supra). However, in the case of Late Nawab Sir Mir Osman Ali Khan (supra) the Supreme Court has referred to the decision of the Andhra Pradesh in Barkat Ali Khan's case (supra) of the Calcutta High Court in Ganga Properties Ltd.'s case (supra), and of the Gujarat High Court in Ashaland Corpn.'s case (supra). The relevant portion reads:

15. In CIT v. Nawab Mir Barkat Ali Khan 1974 Tax LR 90 it was held by the Andhra Pradesh High Court that when a vendor had agreed to sell his property as in the instant case and had received consideration thereof but had not executed a registered sale deed, his liability to pay tax on income from that property did not cease. His position as "owner" of the property within the meaning of section 9 of the Indian income tax Act, 1922 and section 22 of the income tax Act, 1961 did not thereby change. According to the said decision, the agreement to sell and the receipt of consideration by the assessee, the Nizam of Hyderabad, did not create any beneficial ownership according to Indian law in the purchaser, neither did it create any equitable ownership in him. The ownership did not change until registered sale deed was executed by the vendor. The term "owner" in section 9 of the 1922 Act or section 22 of the 1961 Act did not mean beneficial or equitable owner which concept was not recognized in India.

16. In the instant case as we have noticed the position is different. We are not concerned with the expression "owner". We are concerned whether the assets in the facts and circumstances of the case belonged to the assessee any more.

17. ****

18. The Bench decision of the Calcutta High Court in Commissioner of Income Tax Vs. Ganga Properties Ltd., rested on the terms of section 9 of the income tax Act, 1922 and the Court reiterated again that in Indian law beneficial ownership was unknown; there was but one owner, namely, the legal owner, both in respect of vendor and purchaser, and trustee and cestuique trust. The income from house property refers to the legal owner and further that in case of a sale of immovable property a registered document was necessary. But these

propositions as noted hereinbefore rested on the use of the expression in section 9 of the income tax Act, 1922. It used the expression "owner" unlike "belonging to".

19. ****

20. The Gujarat High Court had occasion to deal with part performance in the case of an agreement of sale in Commissioner of Income Tax, Gujarat Vs. Ashaland Corporation, , the Gujarat High Court noted that in case of a person who was a dealer in land, the business transaction would be completed only when the purchase or sale transaction was complete. In order to decide whether the business transaction was complete, the question of vital importance was whether title in the property had passed. It was only on the passing of the title that the transaction became complete and unless the transaction was complete, any advance receipt of money towards the transaction would not form part of income or profit. It was observed by the Gujarat High Court that the doctrine of part performance embodied in section 53A of the Transfer of Property Act, 1882 had only a limited application and it afforded only a good defence to the person put in possession under an agreement in writing to protect his possession to the extent provided in section 53A but an agreement in writing to sell, coupled with the parting of possession would not confer any legal title on the purchaser and take the land out of the stock-in-trade of the seller if the seller was a dealer in land. The context in which the Gujarat High Court had to deal with this question was entirely different. The Gujarat High Court had to proceed on the basis that the assessee under the income tax Act was the owner and he was dealing in land and therefore whether the land was stock-in-trade was the question. In the instant appeal we are concerned with the expression "belonging to" Therefore, the observations of the Gujarat High Court would not be quite apposite to the problem of the instant appeal."

[Emphasis supplied] (p. 525)

As can be seen from the above paragraphs, the Supreme Court did not say that the view taken by the Andhra Pradesh, Calcutta and Gujarat High Courts was contrary to the decision in R.B. Jodha Mal Kuthiala's case (supra). On the other hand, the Supreme Court distinguished the decisions on the basis of the use of the word "owner" in section 9 of the 1922 Act and the words "belonging to" in the 1957 Act which impliedly means that the view taken by the Andhra Pradesh High Court in Barkat Ali Khan's case (supra) and the Calcutta High Court in Ganga Properties Ltd.'s case (supra) and the Gujarat High Court in Ashaland Corpn.'s case (supra) on the interpretation of the word "owner" used in section 9 of the 1922 Act and section 22 of the 1961 Act is correct.

10. On a careful consideration of the matter, I am of the view that the ratio in R.B. Jodha Mal Kuthiala's case (supra) is not apposite to the question arising for consideration in this case. That was a case in which the property of an evacuee statutorily vested in the Custodian under the provisions of the Pakistan

(Administration of Evacuee Property) Ordinance and the decision was rendered entirely on the interpretation of the provisions of the Ordinance. I am in respectful agreement with the view taken by the Bombay High Court that the ratio of the decision in R.B. Jodha Mal Kuthiala's case (supra) is no basis to hold that a person who had parted with possession of property in favour of the intending purchaser but had not executed the sale deed is not the owner, as also with the view taken by the Delhi High Court that whoever is the owner of a property in the eye of law is also the owner for purposes of section 22 and that decision in R.B. Jodha Mal Kulhiala's case (supra) constitutes no basis to take a contrary view. I am also in respectful agreement with the views expressed by the Calcutta High Court in the case of Ganga Properties Ltd. (supra), the Andhra Pradesh High Court in the case of Barkat Ali Khan (supra) and I respectfully disagree with the contrary view taken by the Punjab, Patna and Allahabad High Courts and in the later decision of the Andhra Pradesh High Court.

11. In the result, I answer the question referred to us, in the affirmative and against the assessee.

S. Rajendra Babu, J.

12. The question of law referred for our opinion is as follows:

Whether for purposes of section 22 of the income tax Act, 1961, the ownership of property is transferred only by execution and registration of sale deed and not by other acts such as delivering vacant possession and giving all rights of interest in the property including the right of realisation of rent?

For the assessment year 1978-79 the assessee leased certain sheds to one Y.G. Panduranga Setty and four others for a period of 98 years from 31-7-1974, on an annual rent of Rs. 35,000. The assessee, with the consent of the lessee, entered into an agreement on 1-9-1975 for sale of the property in question to Lakshmi Commercial Corpn., a partnership firm, for a consideration of a sum of Rs. 4,20,000. Pursuant to the agreement the assessee delivered vacant possession of the property also to the said firm with all the rights, title and interest which the assessee had in the property including the right to collect rent from the same. For some reason or the other the assessee could not execute the sale deed and complete the transfer of property in favour of Lakshmi Commercial Corpn. The ITO held that the assessee was the owner of the property and, therefore, was chargeable to tax u/s 22 rejecting the contentions raised on behalf of the assessee that as the assessee could not get any income from the property in question and in view of the agreement entered into by it with the said Lakshmi Commercial Corpn., it was impossible for it to collect rent in respect of the property and, therefore, it was not liable to be charged to tax. On appeal, the AAC held that the property being worth more than Rs. 100 could be transferred only by a registered instrument and in the absence of the same the assessee continued to be the owner of the property and ownership was enough to attract the liability u/s 22. This view was affirmed by the Tribunal on second

appeal.

13. Before us, the learned counsel for the assessee contended, relying upon a decision of the Supreme Court in R.B. Jodha Mal Kuthiala's case (supra) that for the purposes of section 22 owner must be the person who is capable of receiving the rent or income of a property and in the present case inasmuch as possession has been passed on to the vendee, although a registered sale deed has not been executed, and as full consideration has been received, section 53A is attracted. Since no one including the owner can disturb the possession of the vendee there cannot be a better claim for ownership than that of the vendee and, in the circumstances, he being entitled to receive the rent or income of the property must be held to be the owner for the purpose of the said section. It was also submitted that a practical view must be taken in the matter. Merely because there is some residuary left with the original owner, for no practical purpose the vendor or the assessee be treated as an owner of the property. All that the vendor or the assessee has, after he parted with the possession pursuant to the agreement of sale, is only husk of a title and no real rights of ownership. Bearing this aspect in mind the Supreme Court in Nawab Sir Mir Osman Ali Khan's case (supra) noticed the difference in language found in the provisions of sections 22 of the 1961 Act and 3 of the 1957 Act with particular reference to the expressions "belonging to" and "ownership" found therein-. Therefore, it was submitted that the decision in Nawab Sir Mir Osman Ali Khan's case (supra) could not be of any assistance to the department and the case should turn on the ratio of the decision in R.B. Jodha Mal Kuthiala's case (supra). The Supreme Court steered clear of the concept of ownership while dealing with the question whether a property belongs to a person for the purpose of levy of wealth-tax under the 1957 Act. Therefore, when the Supreme Court in categorical terms makes itself very clear by stating that the provisions with which it concerned were different in language and that it was not concerned with either section 22 of the 1961 Act or with section 9 of the 1922 Act I am of the view that it would not be appropriate to apply the ratio of the decision in Nawab Sir Mir Osman Ali Khan's case (supra) to a case which attracts the provisions of section 22. In the context of the contentions raised by the learned counsel what is to be considered is the scope of section 22 and the applicability of the decision in R.B. Jodha Mal Kuthiala's case (supra). The liability to tax u/s 22 arises from ownership of property and the expression "owner" refers or relates to property and not to owner of annual wealth or any person having any interest in the property but to the owner as such. Although in some decisions which have been referred to in the order of my learned brother the view is that mere ownership without right to possession or enjoyment of property would not attract a liability u/s 22, the preponderant view expressed in decisions of several High Courts is that notwithstanding an agreement of sale has been effected and possession delivered on payment of consideration either in full or in substantial measure and section 53A is attracted, even so the vendee cannot be treated as full owner of the property until a registered sale deed is executed. What came up for

consideration in R.B. Jodha Mal Kuthiala's case (supra) was a very peculiar situation as noticed by their Lordships which read thus:

The question is who is the "owner" referred to in this section? Is it the person in whom the property vests or is it he who is entitled to some beneficial interest in the property? It must be remembered that section 9 brings to tax the income from property and not the interest of a person in the property. A property cannot be owned by two persons, each one having independent and exclusive right over it. Hence, for the purpose of section 9, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right.

For a minute, let us look at things from the practical point of view. If the thousands of evacuees who left practically all their properties as well as businesses in Pakistan had been considered as the owners of those properties and businesses as long as the "Ordinance" was in force then those unfortunate persons would have had to pay income tax on the basis of the annual letting value of their properties and on the income, gains and profits of the businesses left by them in Pakistan though they did not get a paisa out of those properties and businesses. Fortunately, no one in the past interpreted the law in the manner Mr. Mahajan wants us to interpret. It is true that equitable considerations are irrelevant in interpreting tax laws. But, those laws, like all other laws, have to be interpreted reasonably and in consonance with justice." (p. 575)

In the peculiar circumstances noticed by their Lordships in the aforesaid paragraphs the Supreme Court took the view it did. Therefore, the principles that could be applicable to a case where by operation of law a person is deprived of the control in regard to a property stand entirely on a different footing from a situation where a person voluntarily places himself in a situation where he does not wish to collect the income in regard to a property. Therefore, the principles stated in R.B. Jodha Mal Kuthiala's case (supra) cannot be applied to the facts of the present case. The view expressed by the Andhra Pradesh High Court in Sahney Steel & Press Works (P.) Ltd.'s case (supra) is based upon some earlier decisions all of which relied upon a decision wherein the Court was concerned with the transfer of a movable property like a bus. In regard to transfer of movable property no formalities such as the same should be in writing and required to be registered are necessary. Hence, the principles applicable to a case of immovable property-- which property has some peculiar restrictions in regard to transfer of ownership-make all the difference and those decisions to which reference has been made at the bar, cannot be used for the benefit of the assessee. Hence, I entirely agree with the view expressed by my learned brother but, at the same time, I express my reservations regarding the applicability of the decision of the Supreme Court in Nawab Sir Mir Osman Ali Khan's case (supra) to the facts of the present case.