

(2000) 11 SC CK 0162
In the Supreme Court Of India
Case No : C.A. No's. 15619-15620 of 1996

Singhai Rakesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Constitution of India, 1950 — Article 366(1)
Finance Act, 1970 — Section 2
Income Tax Act, 1961 — Section 2, 45

Citation : (2000) AIRSCW 4285 : (2001) 247 ITR 150 : (2000) 7 SCALE 666 :
(2000) 5 SCR 111 Supp : (2000) 7 Supreme 697

Hon'ble Judges : S. P. Bharucha, J;Ruma Pal, J;Doraiswamy Raju, J

Bench : Full Bench

Final Decision : dismissed

Judgement

Bharucha, J.—Under challenge are the orders of a Division Bench of the High Court of Madhya Pradesh dismissing a writ petition filed by the appellant-assessee and answering against him a reference made by the Income Tax Appellate Tribunal of the following question:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the profit arising from the sale of agricultural lands did not amount to capital gains within the meaning of Income Tax Act, 1961 ?" The reference related to the Assessment Years 1981-82 and 1983-84.

2. In the previous years relevant to the Assessment Years 1981-82 and 1983-84 the assessee sold agricultural lands which were situated within the municipal limits of Bina. He made capital gains thereon and the Income Tax Officer made him liable to capital gains tax. The first appellate authority agreed with the Income Tax Officer and the assessee approached the Tribunal. The Tribunal held that the profit on the sale of agricultural lands was not capital gains within the meaning of the provisions of the Income Tax Act, 1961. From the order of the Tribunal the question aforesaid was referred to the High Court. Pending the

reference, the assessee filed in the High Court the writ petition the order upon which is impugned. The writ petition asked the High Court to declare as unconstitutional the Explanation to Sub-section (1A) and Clause (iii) of Sub-section (14) of Section 2 of the Income Tax Act, 1961 and to declare that capital gains arising from the sale of agricultural lands within a municipal area were not liable to capital gains tax under the Income Tax Act, 1961. The High Court dismissed the writ petition and answered the reference against the assessee.

3. Article 366 defines, in Clause (1), 'agricultural income' to mean "agricultural income as defined for the purposes of the enactments relating to Indian income tax". Entry 46 of List II of the Seventh Schedule of the Constitution speaks of "Taxes on agricultural income"; in other words, it is for the States to legislate on the subject of taxes on agricultural income. Entry 82 of List I of the Seventh Scheduled reads "Taxes on income other than agricultural income"; in other words, it is for the Union to legislate on the subject of taxes on income other than agricultural income.

4. In the Income Tax Act, 1922 'agricultural income' was defined in Clause (1) of Section 2. Sub-clause (a) thereof alone is relevant for our purpose. Thereunder, 'agricultural income' meant "any rent or revenue derived from land which is used for agricultural purposes...". Section 2(4A) defined 'capital asset' to mean "property of any kind held by an assessee" but not "any land from which the income derived is agricultural income.

5. It was submitted by learned Counsel for the assessee that 'agricultural income' in Clause (1) of Article 366 must be read only as it was defined in 1950 when the Constitution came into force; that is to say, in the manner indicated in Section 2(1)(A) and 2(4)(A)(iii) of the 1922 Act. To decide the correctness of the submission, it is necessary to give true meaning to Clause (1) of Article 366. 'Agricultural income' thereunder means "agricultural income as defined for the purposes of the enactments relating to Indian income tax". The definition does not say that 'agricultural income' means "agricultural income as defined in the 1922 Act". It does not even say that it means "agricultural income as defined for the purposes of the enactment relating to Indian income tax". It says that it means "agricultural income as defined for the purposes of the enactments relating to Indian income tax". The use of the plural 'enactments' is very relevant. It means that agricultural income for the purposes of the Constitution means agricultural Income as it is defined at the relevant time in the enactment that then relates to income tax.

6. In the judgment of this Court in *Bajaya Vs. Gopikabai and Another*,] the position in law, as applicable here, is stated thus:

Broadly speaking legislation by referential incorporation falls in two categories: First, where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. Second, where a statute incorporates by general reference the law concerning a particular subject, as a genus. In the case

of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of latter category, it may be presumed that the legislative intent was to include all the subsequent amendments also made from time to time in the generic law on the subject adopted by general reference. This principle of construction of a reference statute has been neatly summed up by Sutherland, thus:

A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted. Corpus Juris Secundum also enunciates the same principle in these terms:

...Where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof,...the reference will be held to include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as far as the changes are consistent with the purpose of the adopting statute.

7. Under the terms of the Constitution, Parliament is empowered to legislate to say what 'agricultural income' means. What Parliament says in this regard in the statute then current relating to income tax is the definition of 'agricultural income' for the purposes of the Constitution. In regard to such agricultural income the States may legislate. In regard to all other income it is for Parliament to legislate. (See *Karimtharuvi Tea Estate Ltd. Vs. State of Kerala*,

8. It is in this background that the impugned amendments in the 1961 Act may be seen. Clause (1A) of Section 2 defined 'agricultural income' to mean, inter alia, "any rent or revenue derived from land which is situated in India and is used for agricultural purposes". Clause (14) of Section 2 defined 'capital asset' to mean "property of any kind held by an assessee in India...but does not include agricultural land in India...". The words 'agricultural land in India' were substituted by the Finance Act, 1970 with effect from 1st April, 1970 to read thus:

(iii) agricultural land in India, not being land situate :

(a) in any area which is comprised within the jurisdiction of a 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 and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometers, 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, urbanization of that area and other relevant considerations, specify in this behalf

by notification in the Official Gazette;"

It appears that by reason of the decision of the Bombay High Court in *Manubhai A. Sheth and others Vs. N.D. Nirgudkar*, 2nd Income Tax Officer, A-II Ward, Bombay and another, , an Explanation was added by the Finance Act, 1989, with effect from 1st April, 1970, to Clause (1A) of Section 2 which read thus:

Explanation -- For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of Sub-clause (iii) of Clause (14) of this Section;

9. The position, as a result, is that income arising from the transfer of agricultural land that falls within the terms of items (a) and (b) of Sub-clause (iii) of Clause (14) of Section 2 falls outside the ambit of revenue derived from land and therefore, outside the ambit of 'agricultural income'. Such income, therefore, is liable to capital gains tax chargeable u/s 45 of the 1961 Act.

10. Parliament has, as aforestated, the power to define what agricultural income is in the 1961 Act; the amendment of Sub-sections (2) and (14) of Section 2 thereof in the manner aforestated are, therefore, good in law. The effect is that the assessee is liable to pay capital gains tax on the sales of his lands within the municipal limits of Bina.

11. We are of the view, therefore, that the High Court was right in the conclusions that it came to. To appeals are dismissed with costs.