

(1996) 04 MP CK 0072

In the Madhya Pradesh High Court

Case No : Writ Petition No. 31 of 1996 (J)

Singhai Rakesh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1997) 1 MPJR 47

Hon'ble Judges : A.K. Mathur, C.J;S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant; V.K. Tankha, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

By this writ petition, the petitioner has challenged validity of Section 2(1 A) and section 2(14)(iii) levying income tax on agricultural income.

Brief facts giving rise to this writ petition are that the petitioner sold certain agricultural lands within the Municipal limits of Bina. Capital gains thereon was assessed by the Assessing Officer by order date 7-10-1983. In the second appeal filed before the Income Tax Appellate Tribunal, the Tribunal by order dated 24-5-1985, following the decision of the Bombay High Court in the case of Manubhai A. Sheth and others Vs. N.D. Nirgudkar, 2nd Income Tax Officer, A-II Ward, Bombay and another, , held that the agricultural lands though situated within the Municipal limits are not eligible to capital gains tax. The Commissioner of Income Tax filed reference application u/s 256(1) of the Income Tax Act, 1961 and the Tribunal referred the question whether profits arising from sale of agricultural lands amount to capital gains within the meaning of Income Tax Act, 1961 or not. The Bombay High Court in the above case held that capital gains arising from the sale of agricultural lands would be revenue derived from such land within the meaning of Section 2(1 A) of the Act and the Parliament would

have no competence to legislate on this item as the agricultural income is exempted from tax and that is within the competence of the State Legislature. It was further held that the land falling in the municipal areas should be held to be excluded from the definition of "asset" even under the amended sub-clauses (iii) of Sec. 2(14) of the Act. It was further held that Section 2(14)(iii) does not cover the capital gains arising from a transfer of any land used for agricultural purposes, even though it may be situated in an area of municipal limits. The Act was thereafter amended by inserting Explanation to sub-sec (1 A) of Section 2 with retrospective effect from 1st April 1970 by the Finance Act, 1989 with a view to effectuate the levy of tax on capital gains arising from the transfer of such agricultural land.

The petitioner sold agricultural lands within Bina Municipal area during the accounting year relevant to the assessment years 1981-82 and 1983-84. He claimed that the capital gains arising from the sale of such agricultural lands was not chargeable to tax under the Income Tax Act, 1961 and relied on the decision of Bombay High Court in the case of Manu Bhai (supra). The income tax Officer, Sagar negated the contention and assessed the capital gains to income tax by order dated 17-10-1983. The First Appellate Court rejected the appeal of the Assessee by order dated 28th September, 1984. In second appeal, the Tribunal allowed the appeal of the Assessee/petitioner, following decision of Bombay High Court. On reference application having been filed by the Revenue, the Tribunal referred the question before this Court for answer which reads as under:

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 ?

Meanwhile the Act was amended and Explanation was inserted below the proviso in sub-section (1 A) by the Finance Act, 1989 with retrospective effect from 1.4.1970. The petitioner has now filed this writ petition challenging the validity of the aforesaid Explanation on the ground that the Parliament is not competent to legislate on the subject. Though the amendment in the Income Tax Act was brought about by inserting Explanation way back in 1989, it has been challenged in 1996 when the reference matter came up for consideration before us. A challenge to the validity is belated. Be that as it may, we have heard learned counsel at length and proceed to examine the validity of the provision. In order to appreciate the controversy involved in this case, it would be necessary to refer relevant provisions of law on the subject.

S. 2(1A) "Agricultural income"; means -

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by -

(i) agricultural; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind., of any land with respect of which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on;

Provided that -

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officer of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated -

(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, organisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

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) or sub-clause (iii) of clause (14) of this Section.

(Explanation inserted by Finance Act of 1989 with retrospective effect from 1.4.1970)

The capital asset has also been defined u/s 2(14), Sub-clause (iii) which is relevant for our purpose. Sec 2(14) (iii) reads as under:

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 consideration, specify in this behalf by notification in the Official Gazette.

Article 366(1) of the Constitution also defines "agricultural income" as under:

366 (1) "agricultural income" means agricultural income as defined for the purpose of the enactments relating to Indian income tax.

In this background, the contention of the learned counsel for the petitioner is that in fact Entry 82 of List-I of Seventh Schedule lays down that Parliament will be competent to legislate on taxes on the income other than agricultural income and Entry 46 of List-II of Seventh Schedule confers power on the State Legislature to legislate taxes on agricultural income. Learned counsel for the petitioner therefore contended that the Parliament has no jurisdiction to legislate on this subject as the taxes on agricultural income are within the competence of the State Legislature. Therefore, the main question which is before us is whether the Explanation inserted by Amendment Act of 1989 has really changed the whole complexion of expression "agricultural income" or not.

Before we deal with the large number of cases cited by the learned counsel for the petitioner/assessee on the subject, suffice it to say that Section 2(1 A) of the Act only talks about the income arising from the agricultural operations. A close reading of Section 2(1-A) goes to show that "agricultural income" means any rent or revenue derived from a land which is situated in India and is used for agricultural purposes; that means if any land is used for agricultural purposes and any income is derived from such operation, then it would be treated to be an agricultural income; or for that matter, any rent or revenue derived from such operation, that alone will be included in the agricultural income. Hence, what is covered under the "agricultural income" is any usufruct derived from that land by agricultural operation, rent or revenue and that will be treated to be an agricultural income and not the sale of agricultural land which should be treated to be an agricultural income.

What is exempted from the income tax is the income arising from the agricultural operation. This will also be clear from the definition of "capital asset" as defined in Section 2(14). There also, it was clarified way back with effect from 1.4.1970

by inserting Clause (iii) (a) & (b) to Sec. 2 (14) as reproduced above. It clarified that it will not include the land situated 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 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. Likewise it will not include any area falling within such distance, not being more than eight kilometers from the local limits of any Municipality as notified by Central Government. It seems that on account of decision given by the Bombay High Court, certain doubts were raised and in order to remove those doubts, as Explanation was inserted in the definition of " agricultural income" given in Section 2 (1 A) and it was clarified that the revenue derived from the 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 Section 2. This was made retrospective from 1.4.1970. This was so because of the amendment in sub-clause (iii) of clause (14) of Sec. 2 of the Act. It was also inserted with effect from 1.4.1970. Though in our opinion the definition of "agricultural income" as defined in Section 2(1 A) is very clear i.e. what was treated to be agricultural income was only the income derived from the agricultural operation or any rent or revenue and it never intended to convey that if any agricultural land is sold out, then income arising from transfer of such land would also be treated as agricultural income" but none the less on account of decision of Bombay High Court, a doubt arose and the same was clarified by inserting Explanation.

Therefore, if any land which has been sold within the Municipal area and any income is derived therefrom, that would not be treated to be an agricultural income. Normally when the area of the Municipality is extended looking to the urbanisation on account of pressure of population, then slowly these agricultural lands are converted into urban areas and they form part of such urban areas. It is true that even after forming of municipal areas, there might exists some lands which may be under cultivation but, that becomes an urban area with the passage of time. There is always struggle between the tax collecting agencies and ingenuity of the tax evaders and it is always an attempt of the tax collectors to tax the areas which are susceptible for evasion of the tax.

In the present case, the land is situated in the Municipal limits. Therefore, by virtue of the amended definition of the "capital asset" under sub-clause (iii) clause (14) of Section 2 of the Indian Income Tax Act such land will be treated to be a capital asset as it is within the territorial jurisdiction of the municipality. In fact, what is exempted from the definition of "agricultural income" is only the yield derived from agricultural operations or rent or revenue arising out of agricultural land and not the sale of agricultural land itself. We are, therefore, of the opinion that the arguments advanced by the learned counsel for the petitioner that the Parliament is not competent to legislate and inserting of the

Explanation on account of lack of legislative competence is absolutely without any basis and unwarranted.

There has been fairly a long debate on this issue in various High Courts all over the country. Some of the High Courts have followed the view expressed by Bombay High Court and other High Courts have not fallen in line with that view. No useful purpose would be served by referring to these decisions debating the decision of Bombay High Court, as after insertion of the Explanation all these controversies have been put on an end. Learned Counsel for the petitioner contended that insertion of the Explanation in Section 2(1 A) amounts to changing of the basic structure of the constitution without amending the Constitution itself. This contention has no force whatsoever. As already mentioned above, we are of the opinion that the definition given in the Income Tax Act only intends to protect the income arising out of agricultural operations and not by the sale of the land. Hence, the arguments advanced by the learned counsel for the petitioner have no legal basis.

It is relevant to mention here that under Art. 366(1), the Constitution has adopted the definition of "agricultural income" as has been defined in the Indian Income Tax Act. Therefore, the amendment which is made by the Parliament in the Income Tax Act by inserting the Explanation is within the competence of the Parliament and by no stretch of imagination, it can be said that such amendment could not be inserted. In this connection it may be relevant to refer to a decision of the Hon'ble Supreme Court in the case of *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, . In this case, question of competence of the Parliament and the State Legislature came up for consideration and their Lordships observed with regard to Kerala Agricultural Income Tax Act thus -

Art. 366 provides that unless, the context otherwise requires, the expression "agricultural income" in the Constitution means agricultural income as defined for the purpose of the enactments relating to Indian Income Tax. Therefore, the agricultural income about which a State Legislature may enact under Entry 46 of List-II would be such income as defined in the Indian income tax Act. The income derived from the sale of tea grown and manufactured by the seller is not solely derived from agriculture. It is an income which is derived partially from agricultural operations and partially from manufacturing processes.

It is recognized that whatsoever definition has been given in the income tax Act shall be deemed to have been adopted under the Constitution also. The agricultural income which has been defined in the Income Tax Act does not include any other income than the income derived from the agricultural operation or rent or revenue from the land and not from the sale of the land. Therefore, the Parliament is competent under Entry 82 List-I of Seventh Schedule to legislate any amendment to the Income Tax Act.

In the case of *G.M. Omer Khan Vs. The Additional Commissioner of Income Tax*,

A.P., Hyderabad, their Lordships have held that any income derived from the acquisition of the agricultural land would be subject to capital gains and it would be eligible to income tax Act u/s 2(14)(iii). In this case, the assessee was owner of property in village Gudimalkapur known as "Khadar Bagh". It comprises of buildings and lands measuring about 45 acres. This property was under the requisition of the Central Government under the Requisitioning and Acquisition of Immovable Property Act, 1952. Later, the Government acquired 36 acres and 22 gunthas of land and passed formal order. The assessee claimed inter-alia that the land was agricultural land situated in a village and the population of that area was less than ten thousand and that the transfer of capital gains took place prior to 1st March, 1970 when the definition of "capital asset" was amended to include certain tax on agricultural land. The High Court held that the land was agricultural land within the meaning of Section 2(14)(iii)(a) of the Income Tax Act, 1961. That was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court negated the contention. Similar is the case here. We are of the view that challenge to the validity of the provisions of the Income Tax Act is absolutely devoid of any merit. Hence, the writ petition is dismissed. There shall be no order as to costs.