(1988) 07 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 10488 of 1988

Vishal Enterprise APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-07-1988

Acts Referred:

Citation : (1988) 41 TAXMAN 210

Hon'ble Judges : S.R. Rajashekara Murthy, J

Bench : Single Bench

Advocate : K.S. Hanumantha Rao, for the Appellant; K. Srinivasan and Raghavendra Rao, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Rajashekara Murthy, J.—The petitioner-firm is engaged in the business of buying and selling timber obtained from the State Government and its agencies and is an income tax assessee. It has challenged, in this writ petition, the press note dated 23-6-1988 issued by the Ministry of Finance [since published in 1988 72 CTR News & Views 11] a copy of which is produced as Annexure A to the writ petition. By the Finance Act, 1988, section 44AC to the income tax Act, 1961 (''the Act'') which is a special provision for computing profits and gains from the business of trading in certain goods, was inserted with effect from 1-4-1989 and made applicable to the period relevant for the assessment year 1989-90. By the application of this provision a certain percentage of the purchase price paid or payable by the buyer in respect of specified goods shall be deemed to be the profits and gains of the buyer from the business of trading in such goods, chargeable to tax under the income tax Act.

In the case of an assessee dealing in alcoholic liquor a sum equal to 40 per cent of the amount paid or payable by the buyer as the purchase price, shall be deemed to be the profits and gains of the buyer from that business.

In the case of assessees dealing in timber a certain percentage of the purchase price, as mentioned in the table, is deemed to be the profits and gains of the buyer from that business.

2. Section 206C of the Act introduced by the same Finance Act provides for the procedure to collect the said sum from the buyer as specified in the table annexed to section 206C, with reference to each class of goods referred to therein. This has come into force on 1-6-1988.

3. A press note came to be issued by the Finance Ministry as per Annexure A giving illustration clarifying how the provisions of section 206C should be understood and implemented. The illustration given in the press note reads thus :

...To illustrate, if the total amount payable by a buyer to the ''seller'' is Rs. 100, the sum to be collected at source will be Rs. 10 in the case of ''timber obtained by any mode other than under a forest lease''...." (p. 13)

A circular was also issued by the Chief Conservator of Forests, Karnataka in conformity with this circular.

4. In this writ petition, the petitioner has challenged the press note dated 23-6-1988. The petitioner''s contention is, if the provisions of section 44AC are implemented as per the press note the collection of tax would be 66f per cent of the income comprised in the purchase price. It is, therefore, argued on this premise that such collection is wholly illegal and opposed to section 206C and section 2(29C) of the Act, which defines ''maximum marginal rate''.

5. I am unable to appreciate the argument of Shri Hanumantha Rao. What is deemed to be profits and gains of the petitioner u/s 44AC is 15 per cent or 10 per cent of the purchase price depending upon the nature of lease and the manner of obtaining timber for business. Section 206C provides for collection of such deemed profits at source from the buyer of any goods and at rates specified in the table annexed to section 44AC. What is required to be collected from the buyer is the percentage of such amount as income tax. ''Such amount'' referred to in section 206C cannot be any amount other than the ''purchase price'' and the percentage of the purchase price which is deemed as the profits and gains of the buyer, is also specified in column 3 of the table.

6. The illustration in the press note is issued precisely for the purpose of clarification as to what should be treated as the deemed income and what should be the amount that should be collected by the seller from the buyer. There is absolutely no ambiguity in the provisions of section 206C and even if there is any doubt, it is clarified by the press note. There is no reason for any apprehension by the petitioner that by the implementation of this scheme it results in levy of 66graphic per cent on the income of the petitioner. Hence, the writ petition is rejected.