

Commissioner of Income-Tax

Vs

Bhurangya Coal Co

Civil Appeal No. 36 of 1956

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

23.09.1958

JUDGMENT

VENKATARAMA AIYAR J.

This is an appeal against the judgment of the High Court of Patna in a reference under section 66(1) of the Indian Income-tax Act, 1922. The respondent is a firm and was the owner of a colliery at a place called Bhurangya. On the 16th March, 1946, it entered into an agreement to sell the colliery, lands, super-structures, machinery and fixtures to a company called Bhurangya Coal Co. Ltd., for a consideration of Rs. 6,10,000. There is a schedule attached to the deed of agreement and thereunder are set out in great detail all the properties which are the subject-matter of the agreement. It consists of two parts; the first part includes land, building and the structures and the second part consists of movables including machinery, trucks, pipes, motor cars and the like. The value of the property mentioned in part I is fixed at Rs. 2,00,600 and that of the properties described in the second part at Rs. 4,09,400. It is recited in the agreement that the properties mentioned in the second part are capable of being transferred by delivery. It may be mentioned that the Bhurangya Coal Co. Ltd. was incorporated only on the 18th March, 1946. But two of the promoters of the company signed the agreement dated the 16th March, 1946, as representing the company. After the company was incorporated, the directors adopted the transaction by a resolution dated the 29th March, 1946. On the 30th March 1946, all the properties included in the agreement, movables and immovables, were put into the possession of the company, On the 17th March, 1946, a sale deed was executed and registered in respect of the immovable properties mentioned in part I. The sale deed recited the agreement dated the 16th March, 1946, and refers to the two clauses of properties agreed to be sold thereunder. The actual conveyance under the deed is only of the properties mentioned in part I. The price is also given as Rs. 2,00,600 which is the price mentioned in the agreement for the immovable properties set out in part I. These are the facts material for the purposes of the present appeal.

On the 1st April, 1946, section 12B of the Indian Income-tax Act came into force. It is as follows :

"The tax shall be payable by an assessee under the head 'Capital gains' in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March, 1946. and before the 1st day of April, 1948."

Now the point that arises for determination in these proceedings is as to the extent to which the profits of the transaction entered into on the 16th March, 1946, and completed by the sale deed dated the 17th May, 1946, are assessable to income-tax under the above section. So far as the immovables are concerned, the position is clear. The title to them passed to the transferee only when the sale deed was concluded on the 17th May, 1946, and not when the agreement was concluded on

the 16th March, 1946. The transaction therefore falls directly within the operation of section 12B. So far as the movable properties are concerned, the position is equally clear. Title to the movables passes when they were delivered to the transferee and that was on the 30th March, 1946, and their sale falls outside the section. Therefore, on the terms of the agreement dated the 16th March, 1946, and the sale deed dated the 17th May, 1946, the position is that while the respondent will be liable for tax in respect of profits made with reference to immovables covered by the sale deed dated the 17th May, 1946, it will not be liable to tax in respect of profits attributable to the sale of movables of which delivery was given to them on the 30th March, 1946, That precisely was the determination made by the Appellate Tribunal.

The matter then came before the High Court of Patna on a reference under section 66(1) of the Income-tax Act, at the instance of the appellant. There the contention was raised that the differentiation between movable and immovables on which the judgment of the Tribunal rested had not been made at any time in the prior stages of the proceedings and that was a matter on which further evidence would have to be taken to ascertain the intention of the parties and that, therefore, the matter should be remanded for further enquiry to the Appellate Tribunal. The learned Judges refused to accede to this contention for the reason that no such application was made before the Tribunal and that it was a point which ought not to be allowed to be taken for the first time in the High Court. On behalf of the appellant, it is stated that the question as to what are immovables and what are movables, arises only on the judgment of the Tribunal and that, therefore, an opportunity ought to be given for an investigation of this aspect of the question. We are not impressed by this argument. Surely, before the Tribunal there must have been a discussion as to the position with reference to the movables as distinct from the immovables, under the transaction and if the appellant considered that in view of that distinction, further enquiry was called for, it was incumbent upon it to apply to the Tribunal itself to order it and not having done so, it had no right to call upon the High Court to remand the matter for that purpose. In our opinion the High Court was justified in declining to entertain this point.

It is next argued for the appellant that some of the properties described as movables in part 2 of the schedule are really fixtures which would be immovable properties as defined in the General Clauses Act and section 3 of the Transfer of Property Act and that they passed to the transferee under the sale deed, dated the 17th May, 1946, and that, therefore, their value should also be taken into account in assessing the chargeable income under section 12B of the Income-tax Act. The argument in support of this contention might thus be stated :

Section 2, sub-clause (7), of the Sale of Goods Act defines "goods" as follows :

"Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sales."

According to this definition, fixtures mentioned in part 2 of the schedule could be held to be movables only if they were intended to be severed and sold separately, But that was not the intention of the parties. The collieries were sold as a going concern and the intention was, therefore, that the fixtures should pass along with the land. Therefore there was no valid sale of the fixtures as movables. Moreover, section 85 of the Contract Act provides that "Where an agreement is made for the sale of immovable and movable property combined, the ownership of the movable property does not pass before the transfer of the immovable property". Though this section has been repealed by

the Sale of Goods Act, 1930, the principle enunciated there under could be applied to the facts of this case. There was a sale of both movables and immovables and that, therefore, title to the movables could pass only on the execution of the sale deed on the 17th May, 1946. Coming next to the sale of the immovables under the sale deed dated the 17th May, 1946, the matter is governed by section 8 of the Transfer of Property Act. That section provides that unless a different intention is expressed or necessarily implied, a transfer of property passes forth with to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof, and those incidents include all things attached to the earth. Fixtures will pass under this section to the transferee unless it is provided otherwise. Therefore, the sale deed dated the 17th May, 1946, operated to vest title in the fixtures also in the purchaser.

Now the sole point for determination in this appeal is, what were the properties that were sold to the purchaser under the sale deed dated the 17th May, 1946, whether they were only the properties mentioned in part 1 to the schedule or, whether they included the fixtures mentioned in part 2 as well. That is a question which must be decided purely on the construction of the sale deed. No doubt, fixtures attached to the land will pass on a sale of the land under section 8 of the Transfer of Property Act, but that is subject to any different intention which is express or necessarily implied in the document. We have examined both the sale deed, dated the 17th May, 1946 and the agreement to sell, dated the 16th March, 1946, on which it was based. Now it is clear to us on a reading of these documents that there were really two sale transactions, one relating to movables and the other relating to the immovables, as set out in the two parts to the schedule. Different prices are fixed therefor and the actual conveyance under the sale deed dated the 17th May, 1946, is only of the immovables described in part 1. Then there is the fact that the price fixed for the properties sold under the deed dated the 17th May, 1946, is Rs. 2,00,600 which is the price only of the properties described in part 1. It is also to be noted that the parties were conscious that title for the movables would pass by delivery, and expressly say so with reference to the properties mentioned in the second part including the fixtures. Now to say that the parties really intended to sell under the sale deed dated the 17th May, 1946, not merely the properties mentioned in part 1, but also some of the properties mentioned in part 2 would be re-writing the whole document. That, in our opinion, cannot be done. On a construction of the two documents, we are of opinion that what were intended to be sold and what were actually sold under the deed dated the 17th May, 1946, were only the properties mentioned in part 1 of the schedule and not any items included in part 2 and that the intention was to sell the fixtures as movables. In this view, the question whether the movables have been validly sold does not really arise for determination, because if the sale is invalid, then there is no sale so far as they are concerned and section 12B will be inapplicable. The decision of the Tribunal holding that it is only the profits in respect of the sale of the properties described in part 1 that are liable to tax under section 12B is correct. The appeal fails and is dismissed with costs.

Appeal dismissed.

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