

Chittoor Motor Transport Co. (P.) Ltd.

Vs

Income-Tax Officer, Chittoor

Civil Appeal No. 563 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

06.10.1965

JUDGMENT

SIKRI J. –

This is an appeal by certificate of the High Court of Andhra Pradesh against its judgment dismissing a petition filed under article 226 of the Constitution by the appellant. The appellant is a private limited company, hereinafter referred to as "the company", and the three persons hold shares of the company as under :

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Shares	Amount Rs.
Sri C. P. Sarathy Mudaliar	2,797 27,970
Sri C. P. Singaram	420 4,200
Sri C. P. Doraiswamy	500 5,000

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The company was doing transport business and for the assessment year 1959-60 (previous year ending 31st March, 1959) it claimed a sum of Rs. 48,600 as development rebate in respect of the four new buses purchased by it and brought to use during the year. The Income-tax Officer disallowed the amount but the Appellate Assistant Commissioner, on appeal, allowed the entire sum of Rs. 48,600 as development rebate. On May 27, 1959, the three shareholders entered into a partnership and the capital of the firm was as follows :

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Rs.C. P. Sarathy Mudaliar	25,000C.
P. Singaram	10,000C.
P. Doraiswamy	10,000

Total

45,000

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On June 30, 1959, the company passed a resolution transferring a number of motor buses, including the four in respect of which development rebate had been claimed, to the partnership firm for a sum of Rs. 2,52,000. The company was not wound up and is still in existence and carrying on business as a transport company. On February 7, 1962, the Income-tax Officer, purporting to Act under section 35(11) of the Income-tax Act, 1922, hereinafter referred to as the Act, issued a memorandum to the appellant stating, inter alia, that, "since the assets were transferred within 10 years I propose to invoke the provisions of section 35 of the Act and rectify the income by including the rebate allowed as income of the assessee." He invited the assessee to give his objections, if any. The appellant thereupon filed a petition in the High Court on February 19, 1962, praying inter alia that the Income-tax Officer be prohibited from proceeding with the rectification of the income-tax assessment for 1959-60, as per the memoran

The High Court held that section 10(2) (vib) was not repugnant to article 14 of the Constitution, and that the transaction amounted to transfer within section 10(2) (vib).

The learned counsel for the appellant, Mr. Naunit Lal, has reiterated the same points before us. Section 10(2) (vib) and section 35(11) are in the following terms :

"10(2) Such profits or gains shall be computed after making the following allowances, namely :-

(vib) in respect of a new ship acquired or new machinery or plant installed after the 31st day of the March, 1954, which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of acquisition of the ship or of the installation of the machinery or plant, equivalent to, -

(ii) in the case of a ship acquired before the 1st day of January, 1958, and in the case of any machinery or plant, twenty-five per cent of the actual cost of the ship or machinery or plant to the assessee.

and if any such ship, machinery, or plant is sold or otherwise transferred by the assessee to any person other than the Government at any time before the expiry of ten years from the end of the year in which it was acquired or installed, any allowance made under this clause shall be deemed to have been wrongly allowed for the purposes of this Act."

"35. (11) Where an allowance by way of development rebate has been made wholly or partly to an assessee in respect of a ship, machinery or plant in any year of assessment under clause (vib) of sub-section (2) of section 10, and subsequently at any time before the expiry of ten years from the end of the year in which the ship was acquired or the machinery or plant was installed -

(i) the ship, machinery or plant is sold or otherwise transferred by the assessee to any

person other than the Government; or.....

the development rebate originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, proceed to re-compute the total income of the assessee for the relevant year as if the re-computation is a rectification of a mistake apparent from the record within the meaning of this section, and the provision of sub-section (1) shall apply accordingly, the period of four years specified therein being reckoned from the end of the year in which the transfer takes place or the money is so utilised."

There is no doubt that on the true interpretation of section 10(2) (vib) it is clear that if an assessee sells to a person other than the Government at any time before the expiry of ten years from the end of the year in which the motor vehicle was acquired, the allowance is deemed to have been wrongly allowed for the purposes of the Act, but if the assessee sells it to the Government, no such consequence follows.

The learned Additional Solicitor-General says that the object was to help in the development of industry; indeed the rebate was called "development rebate"; and in order to achieve this object a condition was put that if the assessee did not utilise it in his own business, the rebate would be forfeited or deemed to have been allowed wrongly, i.e., not really for development purposes. He said that by a sale to the Government this object was not defeated because the legislature assumes that the Government will act in the public interest. In our opinion, there is no discrimination which is hit by article 14 of the Constitution in this case. The legislature has directed the giving of the rebate on conditions which are exactly the same for every assessee, one condition being that if the assessee sells before the expiry of ten years from the end of the year in which it was acquired, to a person other than the Government, he would forfeit such rebate. This condition is applicable to every assessee and an assessee h

Mr. Naunit Lal the urges that in this case there has been no sale or transfer within section 10(2) (vib). He says that the company consisted of the same three persons as the partnership firm. He further says that it is not a commercial transaction at all and what the latter part of section 10(2) (vib) contemplates is a commercial sale or transfer. In this connection he relies on Commissioner of Income-tax v. Sir Homi Mehta's Executors, Rogers & Co. v. Commissioner of Income-tax and Commissioner of Income-tax v. Mugneeram Bangur. In the first case the facts in brief were these. The assessee and his sons formed a private limited company and transferred to that company shares in several joint stock companies which the assessee had held jointly with his sons for Rs. 40,97,000 which was the market value of the shares at that time. It was found that these shares had cost to the assessee only Rs. 30,45,017 and the income-tax authorities levied income-tax on the difference between the market price and the cost price

The second case, Rogers & Co. v. Commissioner of Income-tax is on the same lines. The Calcutta High Court in Commissioner of Income-tax v. Mugneeram Bangur followed Doughty's case, but there too they were not concerned with the interpretation of words "sold or otherwise transferred".

If we look at the resolution dated June 30, 1959, it is quite clear that it is a sale for consideration of a number of buses by the limited company to the partnership. It would be a sale under the Sale of Goods Act and it would be a sale in any other proper meaning which might be given to the word "sale". We are not concerned whether any profit resulted to the assessee but what we are concerned with is whether the assessee had sold or transferred these buses to the partnership. To us the answer

seem to be plain that whether the transaction resulted in profit to the company or not, the transaction comes within the purview of the latter part of section 10(2) (vib).

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

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