

Khan Bahadur Ahmed Alladin and Sons

Vs

Commissioner of Income-Tax, Andhra Pradesh

Civil Appeals Nos. 708 to 710 of 1966

(CJI K. N. Wanchoo, K. S. Hegde, J. C. Shah, S. M. Sikri, J. M. Shelat, M. Hidayatullah, V. Bhargava, C. A. Viadialingam, R. S. Bachawat, G. K. Mitter, V. Ramswami-I JJ)

24.11.1967

JUDGMENT

RAMASWAMI J. –

These appeals are brought by special leave from the judgment of the High Court of Andhra Pradesh dated 23rd July, 1964, in Referred Case No. 42 of 1962.

The assessment years involved in these appeals are 1358 F., 1953-54 and 1954-55, the relevant accounting periods being the years ending 30th September, 1948, 30th September, 1952, and 30th September, 1953, respectively. The assessee firm, Khan Bahadur Ahmed Alladin and Sons (hereinafter referred to as "the assessee-firm"), consists of three partners, Khan Bahadur Ahmed Alladin, and his two sons, Khan Saheb Dost Mohammed Alladin and Noor Mohammed Alladin. The assessee-firm purchased the Brengum Factory and the properties attached to it consisting of 403 acres of land, 14 factory buildings, about one hundred residential quarters and railway sidings, furniture, etc., in addition to the stores, from the Government of India. The price of the Brengum Factory and the properties together with the furniture, etc., was fixed at Rs. 27 lakhs while the price of the stores was fixed at Rs. 8 lakhs. During the relevant accounting years, the assessee-firm sold a part of the stores for Rs. 9,53,918 O. S. and 46 acres of la

"Whether the purchase of the site and buildings known as 'Brengun Factory' was in the course of a profit-making scheme or an adventure in the nature of trade ?"

By its judgment dated 23rd July, 1964, the High Court answered the question against the assessee-firm.

On behalf of the appellant, Mr. Sukumar Mitra argued that the assessee-firm along with Abdullah Alladin brother or Khan Bahadur Ahmed Alldin had been carrying on business as a partnership firm under the name of Khan Bahadur Ahmed Alladin and Company (hereinafter referred to as "Alladin and Co. "). It has substantial interest in various joint stock companies, and was the managing agent of several joint stock companies, and possessed considerable financial resources. The assessee-firm acquired the Brengun Factory with the intention of starting a bicycle factory or some other industry as an investment, but not with the intention of resale. The argument was stressed that the purchase and sale of land and buildings was not in the line of business of the assessee-firm. It was stated that the purchase was an isolated transaction and even after the sales, a major portion of the factory remained with the assessee-firm. It was contended that the assessee-firm had not developed the land or parceled it out with the vies

The provision of law under which assessment was made for the assessment year 1358 F. was section 31(3) of the Hyderabad Income-tax Act (hereinafter referred to as the Hyderabad Act"), which corresponds to section 23(3) of the Indian Income-tax Act, 1922 (hereinafter preferred to as the "Indian Act"). The assessments for the subsequent years were made under the Indian Act. The charging section under the Hyderabad Act is section 3, which corresponds to section 4 of the Indian Act. The word "business" is defined in section 3(1) of the Hyderabad Act which is identical with the language of section 2(4) of the Indian Act. Section 8 of the Hyderabad Act states :

"Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely :....

(iv) Profits and gains of business, profession of vocation."

It corresponds to section 6 of the Indian Act.

The question whether profit in a transaction is a capital accretion or has arisen out of an adventure in the nature of trade is a mixed question of law and fact. In *G. Venkataswami Naidu and Co. v. Commissioner of Income-tax* it was pointed out by this court that the expression "in the nature of trade" in sub-section (4) of section 2 of the Indian Act postulates the existence of certain elements in the adventure which, in law, would invest in with character of trade or business : and that a Tribunal, while considering the question whether a transaction is or is not an adventure in the nature of trade, before arriving at its conclusion on the facts, has to address itself to the legal requirements associated with the concept of trade and business. In other words, in reaching the conclusion that the transaction as an adventure in the nature of trade, the Appellate Tribunal has to find the primary evidentiary facts and then apply the legal principle involved in the statutory expression "adventure in the nature of

The question whether the transaction is an adventure in the nature of trade must be decided on a consideration of all the relevant facts and circumstances which are proved in the particular case. The answer to the question does not depend upon the application of any abstract rule principle or formula but must depend upon the total impression and effect of all the relevant facts and circumstances established in the particular case. In *Californian Copper Syndicate v. Harris*, Lord Justice Clerk observed :

"It is quite a well settled principle in dealing with questions of assessment of income tax that where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at the enhanced price is not profit.... assessable to income tax. But it is equally well established that enhanced values obtained from realisation or conversion of securities may be so assessable where what is done is not merely a realisation or charge of investment, but an act done in what is truly the carrying on, or carrying out, of a business.... What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts; the question to be determined being-Is the sum of gain that has been made a mere enhancement of value by realising a security or is it a gain made in the operation of business in carrying out a scheme for profit making ?"

But in judging the character of such transactions several factors have been treated as significant in

decided cases. For instance, if a transaction is related to the business which is normally carried by the assessee, though not directly part of it, an intention to launch upon an adventure in the nature of trade may readily be inferred. A similar inference would arise where a commodity is purchased and sub-divided, altered, treated or repaired and sold or is converted into a different commodity and then sold. The magnitude of the transaction of purchase, the nature of the commodity, the subsequent dealing of the assessee, the nature of the organisation employed by the assessee and the manner of disposal may be such that the transaction may be stamped with the character of a trading venture. In *Martin v. Lowry* the assessee purchased a large quantity of aeroplane linen and sold it in different lots, and for the purpose of selling it started an advertising campaign, rented offices, engaged an advertising manager

"It is generally more easy to hold that a single transaction entered into by an individual in the line of his own trade (although not part and parcel of his ordinary business) is an adventure in the nature of trade than to hold that a transaction entered into by an individual outside the line of his own trade or occupation is an adventure in the nature of trade. But what is a good deal more important is the nature of the transaction with reference to the commodity dealt in. The individual who enters into a purchase of an article or commodity may have in view the resale of it at a profit, and yet it may be that that is not the only purpose for which he purchased the article or the commodity, nor the only purpose to which he might turn it if a favorable opportunity of sale does not occur. In some of the cases the purchase of a picture has been given as an illustration. An amateur may purchase a picture with a view to its resale at a profit, and yet he may recognise at the time or afterwards that the possession of

These are cases of commercial commodities but a transaction of purchase of land cannot be assumed without more to be an adventure in the nature of trade. In *Leeming v. Jones*, a syndicate was formed to acquire an option over a rubber estate with a view to resell it at a profit, and finding the estate too small the syndicate acquired another estate and sold the two estates on profit. It was held that the transaction was not in the nature of trade and the profit was not liable to the assessee to tax. The same view was expressed in *Saroj Kumar Mazumdar v. Commissioner of Income-tax* in which the assessee who carried on business of engineering works purchased land, which was under requisition by the Government, negotiated a sale before the land was de-requisitioned and sold it after the land was released. Again in *Commissioner of Inland Revenue v. Reinhold*, the respondent who carried on business of warehouse men, bought four houses in January 1945, and sold them at a profit in December 1947. He admitted that he had

As we have already said, it is not possible to evolve any legal test or formula which can be applied in determining whether a transaction is an adventure in the nature of trade or not. The answer to the question must depend on relevant factors and circumstances proved therein and which determine the character of the transaction. What then are the material facts found in the present case ?

Alladin and Co. was the managing agent of several joint stock companies, viz., Hyderabad Asbestos Cement Products Limited (hereinafter referred to as "the Asbestos Co. "), Hyderabad Laminated Products Limited (hereinafter referred to as "the Laminated Products"), Hyderabad Allwyn Metal Works Limited (hereinafter referred to as "Allwyn Co. ") and others. Alladin and Co. started Asbestos Co. in 1946, and the Laminated Products in 1947. The Government of Hyderabad had 50 per cent. shareholding in both these companies. Negotiations for the purchase of Brengun Factory situated in the outskirts of Hyderabad commenced in December, 1946. On 18th December, 1946, there took

place a meeting between Khan Sahib Dost Mohammed Alladin and Noor Mohammed Alladin on behalf of Alladin and Co. and Khan Bahadur Obaidulla, the then Additional Financial Adviser to the Government of India. The latter informed the two Alladin brother that the Government of India had decided to sell the Brengun Factory as the war had ended and it was go

Having regard to the total effect of all the relevant facts and circumstances established in this case we are of the opinion that the High Court was right in its conclusion that the purchase of the site and the buildings of the Brengun Factory was an adventure in the nature of trade and was in the course of a profit making scheme and the question was rightly answered by the High Court against the assessee-firm.

We consider it necessary to add that the statement of the case made by the Appellate Tribunal is unsatisfactory and gives no information whatever about the arguments respectively advanced by the parties or the findings recorded by the Appellate Tribunal. The statement of the case is not intended to be a mere copy of the order sheet in a litigation but it must set out the points raised by the aggrieved party, the reply thereto, if any and the authorities or statutory provisions relied upon for the view taken by the Appellate Tribunal together with an intelligible summary of the facts found by the Appellate Tribunal. A statement of the case should fully, clearly and precisely set out all the relevant facts, or if the facts have been fully set out in the judgment of the Tribunal they may be incorporated in the statement of the case by a reference to particular paragraphs of the judgment in which the facts are so set out. In any event, it is important that the Appellate Tribunal should state clearly its conclusi

For the reason already expressed, we hold that these appeals must be dismissed with costs.

There will be one hearing fee.

Appeals dismissed.

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