SUPREME COURT OF INDIA

M. R. Goyal

Vs.

Commissioner of Income-tax, Bombay City I, Bombay

C.A.No.681 of 1968

(J. C. Shah, V. Ramaswami and A. N. Grover, JJ.)

12.02.1969

JUDGEMENT

GROVER, J.:-

1. This is an appeal by special leave from a judgment of the Bombay High Court answering the following question referred to it by the Income-tax Appellate Tribunal in the affirmative and against the assessee :

"Whether on the facts and circumstances of the case the receipt of Rs. 1,87,000 in the hands of the assessee is a revenue receipt and liable to income-tax ?"

The assessee used to carry on his business under the name and style of Milkhiram Bros. He was being assessed from the year 1945-46 onwards. On October 31, 1946 he secured a contract for the purchase of approximately 1,28,499 parachutes from Tata Aircraft Ltd. The parachutes belonged to

the Government of India and the Tata Aircraft Ltd., was acting as the agent of the Government. The agreed purchase price of the parachutes was approximately 93 1/2 lakhs. The contract was entered into by means of letters. The assessee addressed a letter dated October 29,1946 to Tata Aircraft Ltd. containing an offer. Tata Aircraft Ltd. sent a reply dated November 1, 1946 confirming the sale on the terms and conditions given in that letter. The assessee had to make a deposit by way of earnest money of a sum of Rs. 10 lakhs. The assessee did not have enough funds with him. He entered into an arrangement with M/s. Nathmal Nihalchand, Pokhraj Hirachand and Harilal Hargovandas for financing the business. The details of this arrangement were contained in a letter dated October 31st, 1946. The amount of Rs. 10 lakhs was to be deposited by the latter who were to receive a "net profit share of 9 As. in a rupee". The assessee later on arranged on November 30, 1946 with the financiers to withdraw from the old arrangement recorded in the letter dated October 31, 1946. The benefits of the contract of purchase of parachutes were transferred to the firm styled as Pokhraj Hirachand for a sum of Rs. 3,00,000 on November 13, 1946. On November 14, 1946 the parties approached Tata Aircraft Ltd., who agreed to accept M/s. Pokhraj Hirachand as purchasers of parachutes on the terms and conditions originally agreed to between the assessee and that company. On November 22, 1946 an agreement of partnership was entered into between six persons, namely, Nathmal, Pokhraj, Chandumal, Prithviraj, Shapoorji and Co. Ltd., and Jamalbhai. This partnership took over the contract of purchase entered into by Pokhraj Hirachand. It was registered by the Income-tax authorities for the assessment year 1948-49.

2. M/s. Pokhraj Hirachand in their assessment claimed a deduction of Rs. 3,00,000 being the payment made to the assessee under the arrangement mentioned above. The Income-tax authorities disallowed the claim on the ground that it was a capital payment. The aforesaid firm appealed to the Tribunal which held that only a payment of Rs. 1,87,000 had been proved to have been made to the assessee. For the assessment year 1947-48 the Income-tax Officer reopened the assessment of the assessee under Section 34 of the Income-tax Act, hereinafter called the "Act" on the ground that the income of Rs. 3,00,000 had escaped assessment. The assessee contended that only a sum of Rs. 1,87,000 had been received by him and not Rs. 3,00,000. The Tribunal decided that point in his favour in appeal after he had failed before the Appellate Assistant Commissioner. The assessee's contention before the Tribunal was that the nature of the receipt of Rs. 1,87,000 was capital and not revenue. According to him the amount received was in the nature of a premium for giving up his right to do business in parachutes. The Tribunal did not accede to his contention and held that the assessee had received profit in respect of a venture in the nature of trade. Thereupon the assessee moved the Tribunal and the question of law was referred.

3. The High Court entertained no doubt on the facts which had been found that the receipt of Rs. 1,87,000 was a trading receipt. This was so because the assessee was a businessman dealing in articles including parachute silk. In the opinion of the High Court the contract which he entered into with Tata Aircraft Ltd., was a contract for the purchase of stock-in-trade for the business which he was carrying on. It was argued before the High Court that the amount in question had been received for relinquishing his right to participation in the profits of the partnership from which the assessee withdrew. According to the High Court such an argument had not been presented before the Appellate Tribunal. The letters which were exchanged between the concerned parties were also considered and the conclusion at which the High Court arrived was that the benefit of the contract which the assessee had entered into with M/s. Tata Aircraft Ltd., had been transferred by him in

favour of Messrs. Pokhraj Hirachand for a consideration of Rs. 3,00,000 out of which a sum of Rs, 1,87,000 only had been found to have been actually received by the assessee. That sum therefore represented a receipt for transferring the benefits of the contract entered into by the assessee in the ordinary course of the business.

4. On behalf of the assessee who is the appellant before us it is submitted that the sum of Rs. 1,87,000 received by him could not be regarded as income. The agreement which had been entered into by the appellant with M/s. Tata Aircraft Ltd., was a capital asset or a source of possible income and the transfer which was made was not of the goods which were to be acquired under the contract but the source of income itself, namely, the appellant's share, right, title and interest were transferred. The second contention which was also raised before the High Court is that the amount in question was received by the appellant or relinquishing his right to participate in the partnership which had been formed and from which he withdrew. It could not therefore partake of the character of a revenue receipt.

5. It appears that before the Tribunal only the first contention was raised. The Tribunal found as a fact that it was the appellant who had entered into a contract with M/s. Tata Aircraft Ltd., for the purchase of parachutes for a fixed sum. He intended "to do and did a venture in the nature of trade". The Tribunal took, into consideration the well known normal method of doing supply business in our country. According to it, highly influential parties instead of doing the business themselves manage to secure contracts and pass on the actual execution of the business to others in return for a fixed sum of money. This is what the appellant did and the income which he received was liable to income-tax. It is difficult to see how on these findings the appellant could legitimately argue that the amount of Rs. 1,87,000 was a capital receipt. It is true that by means of the letter dated October 31, 1946 M/s. Nathumal Nihalchand, Pokhraj Hirachand etc. were given 9 As. share in a rupee in the transaction and a partnership agreement was purported to have been entered into. But this letter merely embodied an arrangement for financing a business venture into which the appellant had entered. He did not have the funds and a deposit of Rs. 10 lakhs had to be made immediately. M/s. Nathumal Nihalchand, Pokhraj Hirachand and others agreed to pay that amount to M/s. Tata Aircraft Ltd. It must be remembered that it was the appellant who had entered into the contract with M/s. Tata Aircraft Ltd. in respect of the purchase of parachutes. When he agreed to accept a sum of Rs. 1,87,000 from the aforesaid persons as consideration for transferring the benefits of the contract the appellant can well be said to have concluded a deal which represented the profit which he anticipated by acquiring the parachutes.

6. It has been submitted on behalf of the appellant that he was not carrying on the business of transferring or selling the benefits of contracts and therefore the contract entered into with M/s. Tata Aircraft Ltd. could not be regarded as a part of his stock-in-trade. It would seem that the Tribunal proceeded more on the footing that the contract relating to the parachutes was a venture in the nature of trade than on the basis that it constituted stock-in-trade of the appellant. It is therefore unnecessary to examine this aspect of the matter.

7. It seems to us that the second contention of the appellant ought not to have been entertained by the High Court. It was not raised before the Tribunal. At any rate, the High Court examined it fully and came to the conclusion that the arrangement contained in the letter dated October 31, 1946 was one which had been made between a person in need of money and certain financiers and that no partnership had come into existence. In that view of the matter there could be no question of the appellant having relinquished a share in the partnership.

8. We would accordingly hold that the answer returned by the High Court was correct. The appeal fails and is dismissed with costs.

Appeal dismissed.