

Commissioner of Income-Tax, West Bengal II

Vs

Rajasthan Mines Ltd. Calcutta

Civil Appeals Nos. 1627 and 1628 of 1968

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

05.05.1970

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the decision of the Calcutta High Court rendered in a reference made to it by the Income-tax Appellate Tribunal, 'B' Bench, Calcutta, under Section 66(1) of the Indian Income-tax Act, 1922 (which will hereinafter be referred to as the 'Act'). Along with its statement of case, the Tribunal submitted two questions to the High Court for its opinion. They are :

"(1) Whether, on the facts and in the circumstances of the case, the sums of Rs. 2,55,733/- and Rs. 3,00,332/- receivable by the assessee as arrears of royalty and rent were assessable as the income of the assessee for the assessment years 1948-49 and 1950-51 respectively ? and

(2) Whether on the facts and circumstances of the case, the sum of Rs. 2,80,000/- being the surplus delivered by the assessee on the sale of property was assessable as the income of the assessee for the assessment year 1950-51."

2. The facts set out in the statement of the case, in brief, are as follows :

"The assessee, M/s. Rajasthan Mines Ltd. is a public limited company incorporated on January 23, 1947. The Raja of Ramagarh was the landlord of the North and South Karanpura fields covering about 312 villages. Those tracts of lands were rich in coal and fireclay. Messrs. Karanpura Development Co. Ltd., held coal mining licence in about 14 of those villages. It is also held fire-clay leases in about 8 villages and leases of other minerals in portions of two villages. That company had also a prospecting licence for the coal in the said fields with the option to take further coal mining leases. The leases were also held by three other parties, namely, South Karanpura Development Ltd., Janab Mohammad Kamruddin and Jagadish Prasad Bhagat in respect of other parcels of land, in these fields. By an indenture dated December 22, 1947 (registered on the 26th of February, 1948), in pursuance of agreements dated September 20, 1945, and August 7, 1947, the assessee acquired from the Raja of Ramgarh proprietary interest in all those leased out land, more fully specified in the schedule appended to the said indenture. By the said indenture, the Raja of Ramgarh also transferred and assigned to the assessee his right to receive the arrears of rent and royalty from the lessees with effect from September 1, 1946. The

consideration paid by the assessee for the acquisition of the proprietary rights with the right to realise and recover the arrears of the rent and royalties was Rs. 5 lacs."

3. For the assessment year 1948-49, the Income-tax Officer assessed the entire amount of arrears of rent and royalty, receivable from the said lessees, from September 1, 1946, up to the date of conveyance, namely, December 22, 1947, as the assessee's income for the previous year ended on the 31st March, 1948. The net amount included in the assessment under that head was Rs. 2,55,733.

4. In the previous year ended on December 31, 1949, relevant for the assessment year 1950-51, the assessee purchased another lot of villages from the Raja of Ramgarh as per the conveyance dated January 24, 1949, in pursuance of the agreements already referred to for a consideration of Rs. 2 lacs with all arrears of rent and royalty which on December 31, 1948, amounted to Rs. 3,00,332/-. On August 13, 1949, the assessee sold away its right, title and interest in the major portion of the villages acquired under her aforesaid deeds of conveyance dated December 22, 1947, and January 24, 1949 to Sirka Valley Coal Co. Ltd. and three other parties for a total sum of Rs. 7,50,000/-. The Income-tax Officer treated the entire arrears of rent and royalty amounting to Rs. 3,00,332/- as revenue receipts of the assessee taxable during the assessment year 1950-51. He also treated the sale of the lands by the assessee as a business transaction and taxed a sum of Rs. 2,20,000/- as the net profit of the assessee arising from the sale, which profit was recomputed by the Appellate Assistant Commissioner at Rs. 2,80,000/-. The Income-tax Appellate Tribunal agreed with those conclusion.

5. The High Court of Calcutta, different from the conclusions reached by the Income-tax Officer, Appellate Commissioner and the Tribunal came to the conclusion that the sum of Rs. 2,55,733/- and Rs. 3,00,332/- receivable by the assessee as arrears of royalty and rent were not assessable as the profits of the assessee for the assessment year 1948-49 and 1950-51, respectively. It also disagreed with the conclusions reached by the Income-tax Officer, Appellate Assistant Commissioner and the Tribunal that profit made by the assessee by the sale of the properties purchased from the Raja of Ramgarh was assessable as the income of the assessee for the assessment year 1950-51. Aggrieved by that order, the Commissioner of Income-tax West Bengal, has come up in appeal to this court.

6. We are agreement with the High Court that the purchase of the right to collect arrears of rent and royalty cannot be considered as an income. It is true that the assessee purchased the lessor's right from the Raja of Ramgarh in pursuance of the agreements entered into by the Raja of Ramgarh with third parties whose rights had been acquired by the Raja of Ramgarh with third parties whose rights had been acquired by the assessee. The assessee-company had been incorporated, as seen earlier, on January 23, 1947. Therefore it could not have got any right in the property prior to the conveyance in its favour on December 22, 1947. As per the terms of the said conveyance, the assessee became entitled to the arrears of rent and royalty as a purchaser of those rights. It had no right to collect those arrears of rent and royalty as the owner of the property. It may be that in determining the price payable under the conveyance, the arrears of rent and royalty were not taken into consideration. But that does not change the nature of the right acquired by the assessee. Hence, we agree with the High Court that the first question referred to earlier must be answered in favour of the assessee.

7. Now coming to the second question, according to the assessee, it purchased the tracts of land in question with a view to win mines but for want of finance, it was compelled to sell the same. The primary facts found by the tribunal are : (1) the assessee was heavily indebted to Raja of Ramgarh but there was no evidence to show that the Raja was pressing for the payment of the amount due to him; (2) the memorandum of association of the assessee gave it power to acquire, sell and dispose of and deal with mines and mining properties; (3) as a major part of the land purchased by the assessee

was in the possession of the other mining companies, it was not possible for the assessee to undertake any large-scale and profitable mining operations; (4) the assessee sold the lands purchased by it for profit; and (5) the properties purchased were sold very soon after they were purchased.

8. The above findings did not afford any basis to the tribunal to come to the conclusion that the purchases made by the assessee and the subsequent sale were in the nature of an adventure in trade. The circumstance that the memorandum of association of the assessee permitted the assessee to acquire, and sell and dispose of and deal with mining properties is an inclusive one. It is not shown that the assessee had acquired or sold any other property. The fact that the assessee sold property purchased by it for profit is not decisive in finding out whether the sale was effected in the course of the business of the assessee. From the fact that the assessee could not undertake large scale and profitable mining in the area which was in its possession, no inference may be drawn that lands were acquired with a view to sell later on, nor the circumstance that the properties were sold very soon after they were purchased affords any basis for the conclusion that the sale in question was effected in the course of the business. The primary facts found either individually, or collectively could not have afforded a basis for arriving at the conclusion that the transaction in question was an adventure in trade.

9. It was urged on behalf of the Revenue that the finding of the tribunal that the purchase and sale of lands were made in the course of business being a finding of fact, it was not open to the High Court to interfere with that finding. But as observed by this court in *G. Venkataswami Naidu and Co. v. Commissioner of Income-tax (35 ITR 594)* if the finding of fact is based on an inference from the primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within narrow limits. It is open to the parties to challenge a conclusion of fact drawn by the tribunal on the ground that it is not supported by any legal evidence or that the impugned conclusion drawn from the relevant facts is not rationally possible. If such a plea is established, the court has to consider whether the conclusion in question is not perverse and should not, therefore, be set aside. On the facts of this case the High Court was justified in examining the correctness of the inference drawn by the Tribunal on the basis of the primary facts found by the Tribunal.

10. For the reasons mentioned above, we agree with the High Court that the second question referred to it for its opinion must also be answered in favour of the assessee.

In the result these appeals fail and they are dismissed.

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