

SUPREME COURT OF INDIA

Commissioner of Income-Tax, West ...

Vs.

Hind Construction Ltd.

(A Grover and K Hegde JJ.)

06.09.1971

JUDGMENT

K.S. HEGDE, J.

1. Civil Appeal No. 1287 (NT) of 1971 is by special leave and Civil Appeal No. 2001 of 1968 is by certificate. Both these appeals arise from a reference made to the High Court of Calcutta under Section 66(2) of the Indian Income-tax Act, 1922. The facts of the case are fully set out in the statement of case. There is no need to restate them. The finding of the Tribunal was that there was no sale either at the time when the assessee inflated the price of the machinery which fell to its share at the time of the division or at the time when the new partnership was created. Same is the finding of the High Court. We agree with these findings. The machinery that fell to the share of the assessee was never sold. Therefore, there was no question of the assessee making any profit out of them. No one can sell his goods to himself. A sale contemplates a seller and a purchaser. If a person revalues his goods and shows a higher value for them in his books, he cannot be considered as having sold these goods and made profits therefrom. Nor can a person by handing over his goods to a partnership of which he is a partner and that as his share of capital be considered as having sold the goods to the partnership. It is difficult to appreciate the arguments advanced on behalf of the department that there was a sale either at the time when the assessee showed an inflated price of the machinery that fell to its share at the division or when that machinery was used as the capital of the new firm of which he was a partner. We see no substance in Appeal No. 1287 (NT) of 1971. This appeal is accordingly dismissed with costs.

2. Now coming to Civil Appeal No. 2001 of 1968, we revoke the certificate granted by the High Court as the same is not supported by any reason. Hence this appeal is not maintainable. It is dismissed but there will be no order as to costs.

