

Commissioner of Income Tax, Bombay City

Vs

Abdul Sattar Haji Usman and Others

Civil Appeal No. 1699 of 1969

(K. S. Hegde, P. Jagmohan Reddy JJ)

11.12.1972

JUDGMENT

HEDGE, J. –

1. This is an appeal by special leave. It arises from a decision of the Bombay High Court under Section 66 (2) of the Indian Income-tax Act, 1922 (in short "the Act"), declining to call upon the Tribunal to submit the question of law mentioned in the application.

2. The material facts of this case are as follows :

The respondents purchased three plots of land measuring 1,62,825 sq. yds. from the Archbishop of Bombay. These three plots were situated in different localities. The purchase price for all these three plots together was different localities. The purchase price for all these three plots together was Rs. 10 lakhs. The sale deed does not mention separately the price of each plot. The purchase in question was made on December 21, 1960. Before the purchase was made the assessee paid an earnest money of Rs. 50,000 and at the time of sale he paid another sum of Rs. 25,000; the balance amount was to be paid within three years from the date of the sale. At one time there was controversy whether the sale in question was an adventure in trade or not. That question has been decided against the assessee. The same is no more in dispute. All the authorities under the Act have proceeded on the basis that the purchase in question was in adventure in trade.

3. Out of the area purchased the assessee sold 48,598 sq. yds. On March 6, 1961, at the rate of Rs. 15 per sq. yd. The Income-tax Officer brought to tax what according to him is the profit earned by the assessee in the assessment year 1962-63 as a result of the sale effected on March 6, 1961. For determining the taxable profits he first determined the purchase price per sq. yard by dividing 10 lakhs of rupees by 1,62,825 sq. yds. The difference between the purchase price and the sale price was considered by him as the profits made and on that basis he assessed the assessee. The order of the Income-tax Officer was affirmed by the Appellate Assistant commissioner. The tribunal reversed the order of the Appellate Assistant Commissioner.

4. The Tribunal came to the conclusion that the method adopted by the Income-tax Officer for determining the purchase price per sq. yd. was wholly erroneous. It opined, in our opinion, rightly that there was no basis for averaging the purchase price as the different plots of land purchased were situated at different places and their quality differed. It also noted the fact that a large area of land was in the possession of the tenants and they could be evicted only at considerable cost. It further

opined on the basis of the material before it that the assessee may not be able to take possession of some of the lands. Lastly, it noticed that the assessee had to spend considerable amounts on litigation to obtain possession of some of the lands purchased by him. All these aspects had been ignored both by the Income-tax Officer as well as the Appellate Assistant Commissioner. The Tribunal did not go into the question as to what could be said to be the correct purchase price of the lands sold. It opined that in a venture like the one before us, the profit and loss can be determined only when all the lands purchased were sold. In arriving at that conclusion it relied on the decision of the Bombay High Court in K. H. Mody, In re. ((1940) 8 ITR 179 (Bom))

5. Being dissatisfied with the orders of the Tribunal the department moved the Income-tax Appellate Tribunal to refer the following question to the High Court under Section 66(1) of the Act.

"Whether, on the facts and in the circumstances of the case, the Tribunal, having held that the transaction was an adventure in the nature of trade, is correct in law in holding that the profits made by the assessee by the sale of a part of the land is not ascertainable on the date of the sale and, therefore, no profit can be assessed in the assessment year under consideration ?"

6. The Tribunal rejected that application holding that the law was clear on the point and its finding is essentially a finding of fact. Aggrieved by that decision, the department moved the High Court, as mentioned earlier, under Section 66(2) of the Act. The High Court also rejected that application.

7. It is strongly urged that the Tribunal erred in not referring the question mentioned above for ascertaining the opinion of the High Court and that the High Court erred in not directing the Tribunal to submit that question for its opinion. The question of law arising for decision in this case, we were told, had been considered and decided by this Court in P. M. Mohammed Meerakhan v. Commissioner of income-tax. ((1969) 73 ITR 735 : (1969) 3 SCR 659 (SC) : (1969) 25) In that case a question similar to the one before us came up for consideration and this Court came to the conclusion that the profits earned in any year should be separately computed and assessed in the relevant assessment year. This Court took the view that in a venture somewhat similar to the one before us, the profits are not to be computed when the entire land purchased is sold. It was further urged that, if the law is as stated by the Bombay High Court in Mody's case (supra) it would be extremely easy for an assessee to evade payment of tax. All that he needs to do is not to sell a small portion of the land purchased by him. It was not denied on behalf of the department that the method of average adopted by the Income-tax Officer for the purpose of finding the purchasing price of the lands sold was wholly wrong in view of the fact that the quality of the lands purchased differed from plot of plot as the plots purchased were situated in different places, and that the assessee has not been able to take possession of some of the lands. It is not known whether he will be ever able to get possession of some of the lands purchased, it was also not denied that he had to spend large sums of money in litigation for taking possession of some portions of land purchased by him. It was conceded that under these circumstances it was the duty of the Income-tax Officer to find out the real purchase price of the land sold by taking into consideration all relevant aspects and that he should have given the assessee an opportunity to place before him all the relevant material to assist him in arriving at a just conclusion as regards the purchase price of the plots of land sold. It was also not disputed that only after arriving at a proper conclusion as regards the purchase price of the land sold the Income-tax Officer could have found out the profits or loss made by the assessee in the relevant assessment year. We are of the opinion that the question of law set out in the application of the department did arise for consideration of the High Court and the High Court should have directed the Tribunal to submit that question for its opinion.

8. In the result, we allow this appeal and direct the High Court to call upon the Tribunal to submit for its opinion either the question mentioned in the application of the department or any appropriate question or questions arising from the order of the Tribunal for its decision. In the circumstances of the case we make no orders as to costs in this appeal.

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