

Ukhara Estate Zamindaries P. Ltd.

Vs

Commissioner of Income-Tax, West Bengal

Civil Appeals No. 13 to 15 of 1973

(P.N. Bhagwati, V.D. Tulzapurkar, R.S. Pathak JJ)

19.09.1979

JUDGMENT

TULZAPURKAR J. -

These appeals by special leave involve a common question regarding the taxability of certain amounts received by the appellant-company (hereinafter referred to as "the assessee") during the three accounting years, namely, 1359 B.S., 1360 B.S. and 1361 B.S. relevant to the assessment years 1953-54, 1954-55 and 1955-56, and the question is whether those amounts represented business income or receipts of a capital nature.

The facts giving rise to the question may briefly be stated : The assessee was incorporated on July 3, 1920, for the purpose of taking over the zamindari properties pertaining to the Ukhara Estate which belonged to Rai Pullin Behari Singha Bahadur and the late Gosta Behari Lal Singha. Therefore, on incorporation, by an indenture dated July 5, 1920, the assessee took a lease of the extensive zamindari pertaining to the said estate for a term of 999 years and also took an assignment of movables, including Government promissory notes and jewellery belonging to the members of the lessor's family and the arrears of rents and cesses, debts, decrees, etc., due by the tenants of the said estate, the properties passing to the assessee being specified in the schedule appended thereto. The consideration for the said lease and assignment was fixed at Rs. 4,08,000 which was paid and satisfied by the assessee by allotting and issuing its 4,080 fully paid-up shares to the lessors. The quit rent receivable by the lessors for the lease was Rs. 100 per annum and the assessee also undertook to pay the revenue and cesses payable to the superior landlords in respect of the zamindari. Clause 3 of the memorandum of association set out the various objects for which the assessee was formed and though sub-cl. (a) thereof showed that the assessee was primarily incorporated for the purpose of taking over the assets of the lessor's family upon the terms and conditions set forth in the draft agreement referred to in art. 3 of the articles of association. Sub-clause

(b) of cl. 3 of the memorandum empowered the assessee "to purchase, take on lease or otherwise acquire and traffic in land, house and other property..... and generally to deal in or traffic by way of sub-lease, exchange or otherwise with land and house property..." The estate taken on lease comprised substantial coal bearing lands and mines which the assessee started giving on sub-lease in various parcels to well-known colliery companies for various terms of long duration. During the three accounting years in question, the assessee granted several sub-leases for which it received salami and premia and there were also acquisitions of the portions of the estate by the Land Acquisition Collector for which it received compensation. The

total amount of salami, premia and the compensation received by the assessee in the three accounting years were respectively Rs. 22,197, Rs. 1,88,417 and Rs. 73,327 and the question arose whether these receipts were business income or receipts of a capital nature. The ITO rejected the contention of the assessee that the receipts were of a capital nature and he included the said amounts in the total income of the assessee in each year as its business income holding that the assessee carried on business in leasehold rights and real property. On appeal by the assessee, however, the AAC reversed the finding of the ITO and excluded the amounts in question from the total income of the assessee following the decision of the Tribunal rendered on June 7, 1960, in the assessee's case for the earlier assessment years 1946-47, 1947-48 and 1948-49. The matter was carried by the ITO in further appeals to the Tribunal, but the Tribunal by its common order dated June 29, 1963, dismissed the departmental appeals holding that the receipts were of a capital nature not liable to be included in the taxable income of the assessee. In coming to that conclusion, the Tribunal mainly relied upon cl. 3(a) of the memorandum of association, art. 3 of the articles of association and the terms and conditions set forth in the draft agreement (in accordance with which the indenture dated July 5, 1920, was executed) which showed that the assessee had been primarily incorporated for the purpose of the conservation and management of the family estate of the lessors, that, in fact, the assessee was not carrying on the business of taking leases and granting sub-leases inasmuch as it had not taken on lease any other property from any one else since 1920 up to date and that the transactions of granting sub-leases of long duration to various colliery companies were by way of management of real property by the assessee as owner of leasehold interest and as such the receipts on account of salami, premia and compensation were of a capital nature. The Tribunal relied upon and applied the ratio of the decision of the Madras High Court in P.K.N. Co. Ltd. v. CIT [1963] 47 ITR 195, which has since been confirmed by this court in CIT v. P.K.N. Co. Ltd. [1966] 60 ITR 65.

At the instance of the revenue, the Tribunal referred to the High Court for its opinion the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in excluding the sums of Rs. 22,197, Rs. 1,88,417 and Rs. 73,327 from the total income of the assessee for the years 1953-54, 1954-55 and 1955-56 ?"

The High Court answered the question in favour of the revenue by holding that the receipts were not of a capital nature and were includible in the total income of the assessee as its business income. The High Court took the view that the assessee could not be regarded as a purely family concern incorporated for the preservation and management of the family assets for maintenance of the lessors' family especially as no provision had been made in its memorandum of association or articles of association conferring any right or share on new members that may be born in the coparcenary, it being admitted that Ukhara zamindars constituted a Mitakshara joint family. Relying upon the several objects set out in the memorandum of association, particularly the one indicated in cl. 3(b) (which permitted trafficking by way of sub-leases) and further relying on what it called two special features of the assessee, namely, declaration of dividend and creation of reserve fund by it, the High Court held the assessee to be a trading concern and that it had dealt with its leasehold rights in the lands as trading assets by using them to earn income, rent royalty, salami, premia, etc., and, therefore, the receipts by way of salami or premia were trading receipts and profits therefrom

were business income. In other words, the High Court held that the assessee as a trading concern had dealt with its leasehold interest in zamindari property not as an owner but as a trader and, therefore, the receipts in question were includible in the total income of the assessee as business income. The High Court relied upon the decision of this court in *Karanpura Development Co. Ltd. v. CIT* [1962] 44 ITR 362. It is this view of the High Court that has been challenged before us by the counsel for the assessee in these appeals.

In support of the appeals, counsel for the assessee raised two or three contentions. In the first place, he contended that the High Court was in error in coming to the conclusion that the assessee was a trading concern and that it had dealt with its leasehold interest in the zamindari property as a trading asset by using the same to earn income, rent, royalty, salami, premia etc. He pointed out that in coming to that conclusion the High Court had wrongly allowed itself to be considerably influenced by the three factors; (a) existence of several objects set out in cl. 3 of its memorandum of association, (b) declaration of dividend by it, and (c) creation of reserve fund by it, as according to him none of these factors would show that the assessee had actually dealt with its leasehold interest in the zamindari property as a trader. Secondly, he contended that the real question was whether after incorporation and after acquiring the lease of the zamindari estate, which included substantial coal-bearing lands and mines, the assessee had dealt with its leasehold interest as a land-owner or not and he urged that the manner in which the assessee granted sub-leases of the lands in different parcels to various well-known colliery companies for various terms of long duration extending over 900 years clearly showed that such transactions of granting sub-leases were transactions in the nature of management of the estate as owner of the land and, therefore, the receipts by way of salami, premia and compensation will have to be regarded as receipts of a capital nature and in that behalf he placed reliance upon cl. 3(a) of the memorandum, art. 3 of the articles of association and the terms and conditions of the draft agreement in accordance with which the indenture dated July 5, 1920, was executed, which showed that the assessee had been primarily incorporated for the purpose of preservation and management of the family estate of the lessors. He also pointed out that admittedly it was not the business of the assessee to run collieries nor did it in fact run any colliery on its own but it merely granted sub-leases of various parcels of land to colliery companies which were transactions by way of management of the family estate in fulfilment of the primary object for which it was incorporated. In support of his contentions he relied upon this court's decision in *P.K.N. Co.'s case* [1966] 60 ITR 65.

On the other hand, counsel for the revenue pressed for our acceptance the view taken by the High Court. In particular, he invited our attention to cl. 3(b) of the memorandum of association which conferred power on the assessee not merely to purchase, take on lease or otherwise acquire and to traffic in land, house and other property but also "generally to deal in or traffic by way of sub-lease, exchange or otherwise with land and house property, etc." and urged that the several transactions of granting sub-leases of coal-bearing lands and mines to various colliery companies on payment of rent, royalty, salami and premia must be regarded as business transactions entered into in pursuance of its trading object and, therefore, the High Court was right in coming to the conclusion that the assessee had dealt with its rights in leasehold land as stock-in-trade or trading assets and the receipts by way of salami, premia or compensation were its business income. For the reasons which we shall indicate presently it is impossible to accept the High Court's view in the matter and we have to uphold the conclusion reached by the Appellate Tribunal.

The legal principle or the test which should govern the question of the type that has arisen in these appeals has been clearly enunciated by this court in *Karanpura Development Co. Ltd.'s case* [1962] 44 ITR 362. The assessee in that case was a company formed with the object, inter alia, of acquiring

and disposing of underground coal mining rights in certain coal fields. The memorandum of association of the company enumerated other objects, such as coal raising, but the assessee restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. The leases were acquired for a term of 999 years and were sublet for the balance of the term of the respective leases minus two days. The company never worked the coal fields with a view to raising coal, nor did it acquire or sell coal raised by the sub-lessees. As against a salami of Rs. 40 per bigha which the assessee had paid, it realised from the sub-lessees Rs. 400 per bigha as salami. In addition, the assessee charged certain royalties at rates higher than those it had agreed to pay under the head leases. The company admitted that the income from the royalties was taxable. The question was whether the amounts received by the assessee as salami for granting the sub-leases constituted trading receipts in its hands and the profit therefrom was assessable to tax under the Indian I.T. Act, 1922. Having regard to the objects for which the company indulged in, this court held that the transactions of acquiring leases and turning them to account by way of sub-leases were in the nature of trading activity within the objects of the company and not enjoyment of property as land-owner and the amounts received by way of salami were trading receipts and the profit therefrom were liable to income-tax. Observing that the dividing line between the two types of operations was difficult to find and after referring to a number of decisions, both English and Indian, this court at page 377 of the report enunciated the principle in the following words :

"Ownership of property and leasing it out may be done as a part of business, or it may be done as land-owner. Whether it is the one or the other must necessarily depend upon the object with which the act is done. It is not that no company can own property and enjoy it as property, whether by itself or by giving the use of it to another on rent. Where this happens, the appropriate head to apply is 'income from property' (sectio 9),

even though the company may be doing extensive business otherwise. But a company formed with the specific object of acquiring properties not with the view to leasing them as property but to selling them or turning them to account even by way of leasing them out as an integral part of its business, cannot be said to treat them as land-owner but as trader. The cases which have been cited in this case both for and against the assessee-company must be applied with this distinction properly borne in mind. In deciding whether a company dealt with its properties as owner, one must see not to the form which it gave to the transaction but to the substance of the matter."

The other decision of this court in P.K.N. Co.'s case [1966] 60 ITR 65 is equally important for certain aspects and their significance in determining the question in the instant case have been clarified. In that case, the partners of a firm, known as "P.K.N." formed a private company and transferred to it all their assets and properties consisting of 3,000 acres of rubber and coconut plantations besides vacant sites and houses. The membership of the company was restricted to the members of PNK firm and in consideration of the transfer of all the assets and properties of the aggregate value of 16,50,000 dollars to the company, the partners of the firm were allotted shares of the face value of 6,60,000 dollars, the balance remaining outstanding as a debt due to the firm. Limitations on the admission of the members to the company and other attendant features indicated an intention of conserving the properties of the members of the firm. The memorandum of association of the company specified, inter alia, the following objects : (i) to purchase or acquire and to sell, turn to account, dispose of and deal with property and rights of any kind, and (ii) to sell,

manage, develop or dispose of or otherwise deal with any part of the properties, rights and privileges of the company. Large amounts of money were spent in cultivation and development of rubber and coconut plantations and substantial income was derived therefrom but certain uneconomical and inconvenient plots were sold by the company in 1940 and 1941. Between the years 1942 and 1945, when Malaya was under Japanese occupation, some further plots of land were sold. Thereafter, in 1948, 1949 and 1950, lands were sold from time to time at profit. As a result of these disposals, the total holding of the company was reduced to about 2,000 acres of rubber estates, some houses and the Lee estate. The question was whether the profits realised by the company during the accounting year relevant to the assessment year 1951-52 from the sale of the properties to the tune of 1,41,326 Malayan dollars could be brought to tax. On these facts, this court held that the primary object of the company was to take over the assets of the firm, to carry on the business of planters and to earn profits by the sale of rubber; the acquisition of the estates was not for the purposes of carrying on business in real estate. This court further held that the incidental sale of uneconomical or inconvenient plots of land could not convert what was essentially an investment into a business transaction in real estate. The amount of 1,41,326 Malayan dollars being capital accretion was not chargeable as income. Such conclusion was reached notwithstanding that the memorandum of association of the company conferred power on it to sell or turn to account, dispose of or deal with the properties and rights of all kinds. This court clarified the significance of three aspects thus : (a) the purposes or objects for which a limited company was incorporated had no decisive bearing on the question at issue, (b) the circumstance that a single plot of land was acquired and was thereafter sold as a whole or in plots was not decisive, and (c) nor was profit motive in entering into a transaction decisive, but the question whether in purchasing and selling land the taxpayer entered upon a business activity had to be determined in the light of the facts and circumstances.

In the instant case also, the main question that arises for determination is whether, after acquiring leasehold interest in zamindari estate in granting the several sub-leases of coal bearing lands and mines and receiving the salami and premia and in receiving compensation for compulsory acquisition of its lands the assessee dealt with its leasehold interest in the lands as a land-owner or carried on business with it treating it as its stock-in-trade or trading asset ? It is obvious that if the case falls within the former category the receipts by way of salami, premia and compensation will be capital receipts but if it falls within the latter the receipts will be trading receipts and profits therefrom business income. Having regard to the ratio of the decision in Karanpura Development Co.'s case [1962] 44 ITR 362 (SC) it is clear that for deciding that question regard must be had to the real nature and object or purpose of the transactions entered into by the assessee over the years. Before we proceed to examine the nature and object or purpose of the transactions we would like to point out how and where the High Court has gone wrong in answering the issue against the assessee. In the first place, the High Court has erroneously treated the assessee as a trading concern qua its leasehold interest in the zamindari estate without actually examining the real nature and object of the transactions of sub-leases entered into by the assessee with several colliery companies. Secondly, in arriving at that conclusion, the High Court has been greatly influenced by three factors, (a) existence of the power in its memorandum of association enabling the assessee to indulge in trafficking in land by way of sub-leases of the land, (b) declaration of dividend at a high rate of 25% by the assessee for the relevant years, and (c) creation of reserve fund by the assessee pursuant to certain articles of association and the High Court has given such undue weight to these factors that it almost regarded them as decisive factors. P.K.N. Co.'s case [1966] 60 ITR 65 (SC) has clearly laid down that the existence of the power in the memorandum of association to traffic in sub-leases of lands though relevant would clearly be not decisive. In our view, declaration of dividends and

creation of a reserve fund are not features peculiar to a trading concern, for, it is equally conceivable that a non-trading incorporated entity like an investment company can declare dividends and may also create fund and, therefore, these so-called "special features" are not decisive of the question whether the incorporated entity is a trading concern or not. In deciding that question what is of importance is how it has dealt with its assets or properties, whether as a land-owner or a trader treating the assets or properties as its stock-in-trade and it is the manner of dealing with its assets, the real nature of operations pertaining to them and the object with which such operations are done that assume importance. This aspect has not been properly considered by the assume importance. This aspect has not been properly considered by the High Court.

Looking at the issue from the aforesaid angle there are several facts and circumstances emerging from the record which clearly show that the assessee has been dealing with its leasehold interest in the zamindari property as a land-owner and not as a trader. In the first place, as has been rightly found by the Tribunal, the assessee was primarily incorporated for the purpose of preservation and management of the family estate of the lessors. This is clear from cl. 3(a) of the memorandum of association. Article 3 of the articles of association and the terms and conditions set forth in the draft agreement in accordance with which the indenture dated July 5, 1920, was executed. That this was the primary object also becomes clear from the facts that a nominal quit rent of Rs. 100 per year was payable by the assessee to the lessors for the lease of the zamindari estate obtained by it for 999 years and that along with the lease the assessee also obtained an assignment of movables including Government promissory notes and jewellery belonging to the members of the lessors' family; assignment of Government promissory notes and jewellery could only be for preservation and better management. The High Court felt that what militated against the concept of the assessee being purely a family concern incorporated for the purpose of preservation and management of the family assets for the maintenance of the lessors' family was that no provision has been made in its memorandum of association and articles of association conferring any right or share on new members that may be born in the Mitakshara joint family of the lessors but it is difficult to appreciate this view. On the other hand, allotment of shares of the assessee to a few members of the lessors' family and the absence of a provision conferring any right or interest in the shares on the new arrivals in the family would be more conducive to preservation and proper management of the family assets.

Secondly, admittedly since 1920 up to date the assessee had not taken lease of any other property from any one else except the lease of the zamindari estate under the indenture dated July 5, 1920, a pointer to the fact that the assessee did not not indulge in any business of acquiring other lands.

Thirdly - and this is vital - the manner in which the assessee dealt with the leasehold interest in zamindari estate obtained under the indenture dated July 5, 1920, over the years clearly shows that the transactions of granting sub-leases of coal-bearing lands and mines were by way of management of the estate as landowner. The Tribunal in its earlier order dated June 7, 1960, for the assessment years 1946- 47, 1947-48 and 1948-49, a copy of which had been made a part of the record of the case, has brought out certain relevant facts in that behalf. The Tribunal has pointed out that during the first 11 years of its incorporation the assessee did not grant any sub-lease of any land to any one. In 1339 B.S. the assessee received a sum of Rs. 7, 500 on account of salami or premia from Burrakur Coal Co. Ltd. a party who was already a lessee under the predecessors of the assessee in respect of coal mining right in Mouza Bankola; in 1340 B. S. there was another lease granted to the said coal company where the premium was 2,893-7- 0. Thereafter, for several years there was no lease granted to anybody. In 1349 B.S. another lease was granted to the same Burrakur Coal Co., the premium being Rs. 2,268-12-0. In 1350 B.S. there was no lease granted to anybody. Then between

1351 B.S. and 1354 B.S. several sub-leases of different parcels of coal bearing lands and mines were granted by the assessee to well-known companies for varying terms of long duration extending over 900 years for which the assessee received salami and premium but the fact that such sub-leases were for long duration extending to over 900 years clearly shows that the same parcel of land has been dealt with only once for granting the sub- leases. In the three accounting years relevant to the assessment years in question in the instant case also sub-leases had been granted of different parcels for long duration of over 900 years. Such manner of dealing with leasehold interest by the assessee over the years clearly shows that these transactions of the the estate. The object in granting sub-leases were in the nature of acts done in the management estate. The object in granting such sub-leases was not to deal with the leasehold interest as a stock-in-trade or trading asset. The dealings cannot be regarded as business transactions in real property.

Fourthly, though the memorandum of association empowered the assessee to do business in collieries, admittedly it did not in fact run or work any colliery on its own nor did any business as miners or coal dealers or coke manufacturers, mica dealers, etc.

Having regard to the above facts it seems to us clear that the receipts on account of salami, and premia received by the assessee during the accounting years in question, must be regarded as receipts of a capital nature. So far as the amounts of compensation received by the assessee for compulsory acquisition of portions of land are concerned, the same would obviously partake of the character of capital receipt inasmuch as compulsory acquisition could not be said to be a voluntary transaction or a voluntary deal entered into by the assessee with the Land Acquisition Collector and the compensation would be a substitute for the capital asset lost by the assessee.

In our view, therefore, the High Court had erred in answering the question in favour of the revenue and the Tribunal's view that the receipts in question were receipts of a capital nature and, therefore, not includible in the total income of the assessee, was correct.

In the result, the appeals are allowed and the revenue will pay the costs of the appeals to the assessee.

Appeals allowed.

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