

Commissioner of Income-tax Vs. M. Krishna Rao

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Court : Andhra Pradesh

Decided On : Feb-24-1978

Reported in : [1979]120ITR101(AP)

Judge : S. Obul Reddi, C.J. and ;Amareswari, J.

Acts : Income Tax Act - Sections 256(1)

Appeal No. : Case Referred No. 130 of 1976

Appellant : Commissioner of Income-tax

Respondent : M. Krishna Rao

Advocate for Def. : Y.V. Anjaneyulu and ;K. Lakshminarayana, Advs.

Advocate for Pet/Ap. : P. Rama Rao, Adv.

Judgement :

S. Obul Reddi, C.J.

1. This reference raises the question whether the sale of the plots by the assessee is assessable to tax as income from adventure in the nature of trade for the assessment years 1968-69 and 1969-70.

2. The assessee purchased 16 acres and 14 guntas of land which was jointly held by two owners. He purchased the share of one owner on December 19, 1964, for Rs. 5,000. About three years later on September 2, 1967, he purchased the share of the other owner for Rs. 25,000. He then applied to the Village Panchayat for permission to convert the land into building sites. On January 24, 1968, the Village Panchayat granted him the requisite permission to convert his land into building sites. He had also named the colony as 'Durganagar Colony'. Out of the total extent of 16 acres and 14 guntas, 10 acres was converted into building sites. The assessee then sold some of the plots in the relevant assessment years 1968-69 and 1969-70 for Rs. 35,222 and Rs. 1,06,273, respectively. The ITO treated the income as an income from adventure in the nature of trade. That led to the assessee preferring an appeal before the AAC. The AAC confirmed the order of the ITO only in so far as it related to the assessment year 1968-69. As there was a change in the appellate authority for the next year (of assessment) 1969-70, the successor officer held that the income was not from the adventure in the nature of trade or business. That led to the assessee preferring an appeal to the Tribunal.

3. Two questions were raised before the Tribunal by the assessee : (1) that the

transaction related to sale of agricultural land and, therefore, the income realised therefrom is not taxable at all ; and (2) that it is not a profit derived from adventure in the nature of trade nor was it a capital asset. The Tribunal agreed with the contentions raised by the assessee and allowed the appeal. Hence, the following two questions are referred under Section 256(1) of the I.T. Act, at the instance of the revenue :

' (1) Whether, on the facts and in the circumstances of the case, the profit derived by the assessee on the sale of plots could be assessed to tax as income from adventure in the nature of trade for the assessment years 1968-69 and 1969-70

(2) If the answer to the above question is in the negative, whether, on the facts and in the circumstances of the case, the said profit could be assessed as capital gain in the relevant assessments '

4. It may be stated at the outset that the Tribunal had taken the view that the mere fact that a portion of the land was plotted out and sold on yardage basis would not be sufficient to change its character as agricultural land. In that view, it held that the levy of capital gains tax did not arise. But, as that view by itself did not settle the question, it chose to consider the other question ' whether the transaction was an adventure in the nature of trade'. The Tribunal, on the material placed before it, held that the mere circumstance that the property was purchased in the hope that when sold later, it would leave a margin of profit would not be sufficient to disclose an intention of trade at the inception. The net result of its assessment of the evidence is that the impugned transaction cannot be treated as constituting an adventure in the nature of trade,

5. Mr. Rama Rao, the learned counsel for the revenue, invited our attention to Raja J. Rameshwar Rao v. CIT : [1961]42ITR179(SC) to contend that the view expressed by the Supreme Court in that case is on all fours with the case on hand. Mr. Anjaneyulu, the learned counsel appearing for the assessee, contended that there is no justification at all for coming to a contrary view as it was never the intention of the assessee by plotting out the land to make a business out of it. In other words, it is his case that he was not a dealer in real property and that he had purchased agricultural land for the purpose of investment and not for the purpose of making a business out of it. The facts as emerge from the statement of the case show that he had originally purchased half share of one of the owners of the land on December 19, 1964, for Rs. 5,000. He purchased the other half share for Rs. 25,000 on September 2, 1967. It is from the fact that there was a time lag of over 2 1/2 years between the first transaction and the second transaction that the learned counsel for the assessee sought to contend that it was never the intention of the assessee to trade in real property, and if that was the intention he would have sought conversion of the half share which he had purchased on December 19, 1964, immediately thereafter into building sites. Whether the assessee intended to deal in real property or not has to be judged not from the fact that there was a time lag between the first transaction and the second transaction, but from the fact whether he sought to convert the land which was originally agricultural land into building sites. We are of the opinion that he waited for 2 1/2 years only to purchase the other half share also and make a business out of it. If it was not his intention to deal in real property and he only wanted to invest his monies, he would have sold the land as purchased by him for a higher price. It is not as if he sold the land in its original form. He applied to the Panchayat for a layout and it was sanctioned by it on January 24, 1968. As may be

seen from the date of the second transaction and the date of permission granted by the Panchayat to convert the land into house sites, his intention was not to sell the property without conversion. If it was really a question of investment, as is now sought to be made out by the learned counsel for the assessee, he would have sold the land acquired by him under the two transactions as it was for a higher price. That there was rise in the market value of land is evidenced by the two transactions. He could have easily got at the rate of the second transaction, if he desired Rs. 25,000 for the half share which he first purchased at Rs. 5,000. It is, therefore, plain that his intention was to trade or deal in real property. That is why, he plotted out an extent of 10 acres of land and sold some of the plots in the assessment year 1968-69 for Rs. 35,222 and in the next assessment year for Rs. 1,06,273. He would not have realised those amounts if there was no layout and if he had not plotted out the land for building sites. The Supreme Court in *Raja J. Rameshwar Rao v. CIT* : [1961]42ITR179(SC) has stated unequivocally that even a single venture may be regarded as in the nature of trade or business. That was a case where a jagirdar purchased about 217 acres of land for Rs. 25,502. He constructed on a portion of it shops and in the rest of the land plots were laid out which he sold for Rs. 75,820. The question arose whether the amount of Rs. 75,820 which he realised was income from business. An identical contention as has been raised in this case by the assessee was raised there too, and the learned judges repelling the contention observed (p. 181) :

' When a person acquires land with a view to selling it later after developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it but in parcels, he is dealing with land as his stock-in-trade ; he is carrying on business and making a profit.'

6. From the facts stated above, it is manifest that the intention of the assessee in purchasing the land in two transactions was to do business in real property. The case on hand is one identical with the case with which the Supreme Court was concerned. It is thus plain that the activity of the assessee in dividing the land into plots and not selling it as a single unit as he purchased, goes to establish that he was carrying on business in real property and it is a business venture.

7. Mr. Anjaneyulu, however, invited our attention to *Janki Ram Bahadur Ram v. CIT* : [1965]57ITR21(SC) . The facts in that case are different. That was a case where a dealer in iron scrap and hardware agreed to purchase all the rights of a company in a jute pressing factory installed on a piece of land belonging to it, together with certain lands held on lease and a warehouse thereon and two warehouses on land held as a licensee. The assessee did not enter upon the property at all. Within four months thereafter, that is, after he purchased the rights of that company, he sold the property to a third party. On those facts, it was found that the assessee did not carry on business in jute at any time before he purchased the jute mill. It was also found that apart from effecting certain repairs and putting the factory in working condition, he had not attempted to work the factory. It was, therefore, held that the assessee was only a dealer in iron scrap and hardware and the purchase and sale of the property was not an adventure in the nature of trade. The intention of the assessee was found only to make a profit by reselling the property and he sold it when favourable terms were offered.

8. As pointed out by the Supreme Court in *Raja Rameshwar Rao's case* :

[1961]42ITR179(SC) the assessee had not sold the property as he bought it, but he parcelled it. That clearly brings out the intention of the assessee, namely, to carry on business in real property.

9. We, therefore, set aside the finding recorded by the Tribunal and hold that the profit derived by the assessee on the sale of plots is assessable to tax as income from adventure in the nature of trade, for the two assessment years in question. This question is, therefore, answered in the affirmative and in favour of the revenue.

10. In view of our answer to the first question, it becomes unnecessary to answer the second question.

11. Reference answered accordingly with costs. Advocate's fee Rs. 250.

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