

**Kanwarlal Manoharwal Vs. Commissioner of Income-tax**

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**Court :** Chennai

**Decided On :** Apr-02-1975

**Reported in :** [1975]101ITR439(Mad)

**Judge :** V. Ramaswami and ;V. Sethuraman, JJ.

**Appeal No. :** Tax Case No. 154 of 1969 (Reference No. 47 of 1969)

**Appellant :** Kanwarlal Manoharwal

**Respondent :** Commissioner of Income-tax

**Advocate for Def. :** J. Jayaraman, Adv.

**Advocate for Pet/Ap. :** V. Narayanamurthy and ;V. Ramachandran, Adv.

**Judgement :**

Ramaswami, J.

1. The assessee who is a pawn-broker obtained an assignment of a decree for Rs. 8,000 for a consideration of Rs. 4,000. During the previous year relevant to the assessment year 1964-65, he purchased some house property from the judgment-debtor for a consideration of Rs. 21,500. In part payment of the consideration for the sale, a sum of Rs. 8,000 due under the decree was set off and the balance of consideration was paid in cash. The Income-tax Officer considered that the assessee had made a profit of Rs. 4,000 in the transaction relating to the assignment of the decree and brought this to tax as business profit. In the appeal before the Appellate Assistant Commissioner the assessee contended that he got the assignment only in order to purchase the property which belonged to the judgment-debtor and that any difference in value of the decree and the amount paid by him for getting that decree assigned to him only went in reduction of his investment in the house property and that, therefore, it could not be taxed as business profit. He also contended that the purchase of the building could not be considered as for resale amounting to a business venture in the nature of trade. The Appellate Assistant Commissioner held that the object of getting the assignment of the decree was purely to make a profit and that the assessee did not get the assignment of the decree for the purpose of facilitating the purchase of the property itself. The Tribunal also confirmed this view and held that the facts and circumstances showed that the purchase was a business venture in the nature of trade and, in any case, as held in *Rukmani Co. (P.) Ltd. v. Commissioner of Income-tax* : [1964]52ITR599(Mad) it was incidental to the business of the assessee and that, therefore, liable to be taxed as profit. At the instance of the assessee the following question has been referred :

'Whether, on the facts and in the circumstances of the case, the amount of Rs. 4,000 realised by the assessee by taking an assignment of the decree is taxable as profit from business ?'

2. We have no doubt that on the facts and circumstances of this case the difference of Rs. 4,000 between the value of the decree and the consideration paid for the assignment was a profit made by the assessee in the course of his business. When the assessee purchased the decree on payment of Rs. 4,000 certainly he should have intended to execute the decree and realise the amount due under the decree. The fact that without the necessity of executing the decree and realising the money he was able to purchase the property of the judgment-debtor by private negotiation and got the decree amount set off against the consideration made no difference. The absence of any prior or subsequent dealings of purchase of decree by the assessee has also no significance because even a first venture could be an adventure in the nature of trade and that there is no reason to hold that the first bite should always be a free bite. In fact, the point arising in this case is directly covered by a decision of this court in *Rukmani Co. (P.) Ltd. v. Commissioner of Income-tax*. In that case also the assessee who was carrying on business in money-lending purchased the money decree and ultimately made a profit in realising the decree amount itself. This court held that a money decree is not an asset which one could acquire for keeping it for his enjoyment and the intention of the assessee must have been to realise the decree amount. The purchase in those circumstances was an adventure in the nature of a trade. This court also was of the view that having regard to the nature of the business of the assessee as moneylender the transaction shall also be treated as in the line of his business. A similar view was also taken by the Andhra Pradesh High Court in *Jallu Manikyala Rao v. Commissioner of Income-tax* : [1955]28ITR220(AP) which also related to a case of assignment of decree. It was held that the transaction was a clear case of loaning out money with a view to reap a profit and an adventure in the nature of trade. We are, therefore, of the view that the profit made by the assessee is liable to be assessed. The reference is accordingly answered in the affirmative and against the assessee with costs. Counsel fee Rs. 250.

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