
Commissioner of Income Tax Vs Universal Cine Traders Pvt. Ltd.

Income-tax Reference No. 184 of 1975

Court: Bombay High Court

Date of Decision: Sept. 24, 1985

Acts Referred:

Income Tax Act, 1961 " Section 2(14), 45#Wealth Tax Act, 1957 " Section 2

Citation: (1986) 52 CTR 169 : (1986) 161 ITR 696 : (1986) 24 TAXMAN 492

Hon'ble Judges: Kania, J; Bharucha, J

Bench: Division Bench

Judgement

Kania, J.

This is a reference u/s 256(1) of the Income Tax Act, 1961. The assessment year with which we are concerned is the assessment year 1969-70. The question referred to us for determination is as follows :

Whether, on the facts and in the circumstances of the case, balance 13,200 square yards of land or any part thereof was non-agricultural land

and, therefore, more than 3/25 share of the excess price realised by the assessee-company was liable to assessment under the head "Capital gains"

? If so, how much ?

2. The relevant facts, shortly stated, are as follows :

Govindram Brothers Limited (referred to hereinafter as ""Govindram Brothers"") was carrying on several businesses including film business.

3. They owned the Famous Cine Laboratory at Tardeo and Modern Studio at Andheri. On August 31, 1951, Govindram Brothers entered into an

agreement to purchase an open plot of land admeasuring 24,613 square yards (referred to hereinafter as ""the larger plot"") for Rs. 1,47,816.

Thereafter, they applied to the Collector for permission to use the larger plot for non-agricultural purposes. On November 11, 1952, the Collector

refused to grant such permission. Govindram Brothers thereafter considered it proper to separate their cinema business from the remaining

businesses carried on by them and with that object, the assessee-company, namely, Universal Cine Traders Pvt. Ltd., was incorporated on

October 8, 1953, under the Indian Companies Act, 1913. One of the objects of the assessee-company was to take over the business and the

undertaking of the Famous Cine Laboratory and Modern Studio and all other concerns pertaining to the film line from Govindram Brothers. This

object could not be carried out. However, the larger plot which Govindram Brothers had agreed to purchase as aforesaid was in fact purchased

by the assessee-company on April 23, 1959. Thereafter, about 1,800 square yards of the larger plot was leased out to Govindram Brothers and

Govindram Brothers constructed studio No.4, and chawls thereon in 1962. There is no positive evidence as to how that land was leased out.

Govindram Brothers constructed a powerhouse, a small reservoir and an artificial hillock in one corner of the larger plot, which portion of the land

was not leased out to them. In view of the close connection between the assessee and Govindram Brothers, the rest of the larger plot was also

made available to Govindram Brothers for shooting of films whenever required. On the land adjacent to the larger plot, Govindram Brothers had

put up three studios. These studios had been put up prior to the purchase of the larger plot as aforesaid. A portion of 15,000 square yards of land

out of the larger plot and including the portion of the land leased out to Govindram Brothers was notified for acquisition by a notice u/s 17(3) read

with section 18(1) of the Express Highway Act, 1955. In respect of the land proposed to be acquired, the assessee entered into an agreement with

the Government of Maharashtra and sold the said portion of 15,000 square yards of land to the Government on May 13, 1968. Govindram

Brothers was a party to that agreement. Compensation in the sum of Rs. 8,25,000 was paid by the Government of Maharashtra to Govindram

Brothers directly for buildings, structures, gardens, well and the cost of reconstruction of boundary walls and readjustment of studios Nos. 2 and 3

and for re-sound-proofing in the adjoining three studios, etc. Rupees nine lakhs and fifty thousand were paid by the Government as compensation

to the assessee-company for the acquisition of the said area of 15,000 square yards from the larger plot including the land leased out to Govindram

Brothers. National Highway No. 8 was constructed on the said area acquired by the Government. In the assessment proceedings relating to the

aforesaid assessment year, the assessee contended that it was not liable to assessment on any capital gains as the land which had been acquired

and for which compensation had been paid to the assessee was agricultural land. That contention was rejected by the Income Tax Officer and the

Income Tax Officer included a capital gain of Rs. 8,34,813 in the total income of the assessee. An appeal preferred by the assessee to the

Appellate Assistant Commissioner was dismissed. The assessee then preferred an appeal to the Income Tax Appellate Tribunal. Before the

Tribunal, the learned counsel for the assessee submitted that the land acquired was agricultural land till the time of its acquisition by the

Government, and hence the excess price realised by the assessee was not liable to assessment under the head ""Capital gain"". The contention of the

assessee was that at the time when the land was agreed to be purchased by Govindram Brothers, it was agricultural land. This was in 1951 and

even subsequently the land continued to be subject to assessment of land revenue as agricultural land. It was contended on behalf of the assessee

before the Tribunal that out of a vast area of 24,000 square yards, only a small area admeasuring 1,800 square yards had been leased out to

Govindram Brothers, and it was on that portion that Govindram Brothers had put up a studio. As far as the remaining land was concerned, it was

contended that nothing was done by the assessee to render the land unfit for cultivation. It is significant that before the Tribunal, learned counsel for

the assessee admitted that the entire land acquired other than the land given on lease to Govindram Brothers was permitted to be used by

Govindram Brothers for shooting films, but the learned counsel submitted that this did not permanently change the character of the land. It was

contended on behalf of the Revenue that upon the user of the entire land for non-agricultural purposes, the character of the land was changed. The

Tribunal placed reliance on the fact that the land in question continued to be subject to payment of land revenue till the date of acquisition by the

Government and, on that account, it continued to be agricultural land. It further took into account the fact that the land could not have been put to

non-agricultural use in law and could not have been converted into non-agricultural land without the permission of the Collector. The Tribunal took

the view that the unauthorised construction of a structure by Govindram Brothers without permission over 1,800 square yards of land leased to

them could not change the character of the entire land, namely, the larger plot. As far as the small reservoir and an artificial hillock constructed by

Govindram Brothers were concerned, the Tribunal took the view that this was done for the benefit of shooting and pointed out that the portion in

which the said reservoir and the hillock were constructed was in one corner of the larger plot and away from the land acquired. The Tribunal took

into account the fact that the land acquired had been used for filming or shooting, but it took the view that such occasional use of the land cannot

interfere with the use of the land as agricultural land. The Tribunal also found that the remaining area of the larger plot, namely, (the part) other than

the land leased out to Govindram Brothers, was not put to any particular use at all, and the assessee did not do anything in relation thereto so as to

render it unfit for cultivation or to impress it with the character of non-agricultural land. The Tribunal expressed the view that the mere intention to

make non-agricultural use of the land which was unaccompanied by any positive steps to give concrete shape to that intention could not transform

the character of the land. It is from this decision of the Tribunal that the question set out earlier has been referred to us.

4. Before considering the matter further, we would like to clarify that the only question which we are really called upon to decide is whether the

land notified for acquisition by the Government and subsequently sold to the Government for the purpose of construction of the Express Highway

other than the portion of it which was leased out to Govindram Brothers was agricultural land. The term has not been defined anywhere in the

Income Tax or the Wealth-tax Act and in accordance with well settled principles, the meaning of the term "agricultural land" will have to be

gathered from what is generally understood to be such land or in accordance with popular parlance. Before going into the contentions raised by the

respective counsel, there are certain decisions which, to a considerable extent cover the question which we are called upon to consider. In

Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , the Supreme Court was called upon to consider

whether the property called "Begumpet Palace" within the municipal limits of Hyderabad consisting of vacant lands of about 108 acres and also

buildings enclosed in compound walls constituted "agricultural land" within the meaning of clause (i) of section 2(e) of the Wealth-tax Act, 1957.

The High Court in its decision, on which the Tribunal has placed strong reliance in this case, had taken the view that the said land was agricultural

land. Amongst the factors on which the High Court placed reliance was the factor that the said land was capable of being used for agricultural

purposes, that it had not been put to any use which could change the character of the land by making it unfit for immediate cultivation, and that it

was classified and assessed to land revenue as "agricultural land" under the A.P. Land Revenue Act. It may be mentioned that the High Court also

took into account the fact that the area of the land was very large and abutting Hussain Sagar Lake and it had two wells in it. On an appeal to the

Supreme Court, the Supreme Court reversed the decision of the High Court. The Supreme Court took the view that the four features considered

by the High Court and relied upon, in the absence of any user for non-agricultural purposes, were inconclusive, and the fifth feature, namely, that

the property was classified in the revenue records as agricultural land, alone provided some evidence of the character of the land from the point of

view of its purpose, but that factor was not conclusive and such entries in the revenue records could only raise a rebuttable presumption. In view of

this conclusion, the Supreme Court remanded the matter to the Tribunal to determine afresh whether the land was agricultural, after giving

opportunity to both sides to lead further evidence. This decision of the Supreme Court was followed by a Division Bench of the Gujarat High

Court in Arundhati, Balkrishna v. CIT and Arundhati Balkrishna Vs. Commissioner of Income Tax, Gujarat, . The High Court took the view that

the intention of the owner to put the land to a particular user is one of the criteria, though not the sole or exclusive criterion, that the actual user may

ordinarily furnish prima facie evidence of the nature and character of the land and that the mere fact that the lands are assessed as agricultural lands

under the Land Revenue Code or that the said lands are not actually used for non-agricultural purposes does not necessarily mean that the lands

are agricultural lands. There are certain other factors like the potentiality of the land which have been taken into account by the Gujarat High Court.

On the facts and in the circumstances of the case, the Gujarat High Court took the view that the gains arising on the sale of the land in question was

liable to tax as capital gains u/s 45 of the Income Tax Act, 1961. The principles laid down in this decision have to be kept in mind in determining

the question before us.

5. Coming to the facts of the present case, it is significant that the larger plot, which was of considerable size, was situated in a suburb of a very

large city, namely, Bombay. Quite apart from that, it must be noted that no sooner did Govindram Brothers entered into an agreement to purchase

the larger plot, than they applied for permission to put it to non-agricultural use. It is true that the permission was refused, but the application for

permission clearly shows that the intention of Govindram Brothers in purchasing the larger plot was to use it for non-agricultural purposes. It is

correct that the assessee is technically a different entity from Govindram Brothers, but one cannot lose sight of the fact that the assessee-company

was really formed with a view to take over the film business and the businesses associated with films carried on by Govindram Brothers. That the

said purpose could not be achieved is a different matter. But the facts found clearly show that there was very close association between the

assessee-company and Govindram Brothers. As far as the area of 1,800 square yards leased out to Govindram Brothers is concerned, it has

already been held by the Tribunal that it must be regarded as non-agricultural land and we are not called upon to consider the true character of that

portion of land. But even as far as the remaining land is concerned, it has to be noted that there is no evidence whatever that at any time it was put

to agricultural use either by the assessee or even by its predecessors-in-title. The only factor suggesting that it was agricultural land was that it was

assessed to payment of land revenue as agricultural land. There is no evidence of the actual user of the land prior to the acquisition thereof by

Govindram Brothers. After that, the evidence shows that no agricultural operations were carried on on that land. The only use to which it seems to

have been put is for shooting films. It is true that such user does not seem to have been regular, but the fact remains that the only use to which the

land in question has been put by the assessee is for permitting Govindram Brothers to shoot films. In these circumstances, it appears to us that the

land must be regarded as non-agricultural land. As against the factor of payment of land revenue on the footing of agricultural land, there are

several important factors leading to a contrary conclusion. One is that no agricultural operations have been carried on on the said land for several

years, and, in fact, there is no positive evidence that any such operations were carried on on the said land at any time. The second factor is that the

only use to which the land seems to have been put is for shooting films which can hardly be regarded as an agricultural purpose. The third factor is

that it is clear that the intention of Govindram Brothers in entering into the agreement to purchase the land was to put it to non-agricultural use. That

such intention could not be fully carried out was not because of want of desire on the part of Govindram Brothers, but because the Collector

refused to grant permission to use the said land for non-agricultural purposes. In our opinion, taking into account all these circumstances, the only

conclusion to which we can arrive at is that the said land which was acquired was non-agricultural land and the capital gains earned thereon are

liable to tax u/s 45 of the Income Tax Act, 1961.

6. Mr. Mehta, learned counsel for the assessee, placed strong reliance on the decision of a Division Bench of this court in Commissioner of

Wealth-tax, Poona Vs. H.V. Mungale, . The facts in that case, however, are completely different from the facts in the case before us, so that the

conclusions to which the Division Bench arrived at are not applicable to the case before us at all. In that case, the assessment years with which the

court was concerned were the assessment years 1965-66 to 1969-70. The land had been purchased by the assessee in 1955 and in the land

revenue records, it was described as agricultural land. The land was actually cultivated till 1963, although it remained uncultivated thereafter. There

was no evidence that the land had been put to any non-agricultural use at any time. It was on these facts and circumstances that the court came to

the conclusion that the said land was agricultural land and took the view that the mere fact that no agricultural operations were carried on on the

said land for some years did not lead to the conclusion that it had ceased to be an agricultural land. In the case before us, the facts are completely

different. Just to mention two, the intention with which Govindram Brothers purchased the land was to put it to non-agricultural use. On the portion

of the land leased out to Govindram Brothers, they actually constructed a studio and the entire land was occasionally put to non-agricultural use,

namely, for shooting of films. In these circumstances, the decision in Commissioner of Wealth-tax, Poona Vs. H.V. Mungale, has no application to

the case before us.

7. In the result, the question referred to us is answered as follows :

On the facts and in the circumstances of the case, the balance of 13,200 square yards of land was non-agricultural land and, therefore, the entire

excess price realised by the assessee-company on the sale of such land was liable to assessment under the head " Capital gains".

8. The assessee to pay the costs of this reference.