Commissioner of Income Tax Vs Deep Chand

Court: Delhi High Court

Date of Decision: May 28, 2002

Citation: (2002) 176 CTR 239 : (2002) 257 ITR 756 : (2002) 123 TAXMAN 685

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Full Bench

Advocate: Sanjiv Khanna, R.D. Jolly and Ms. Rashmi Chopra, for the Revenue, for the Appellant;

Judgement

S.B. Sinha, C.J.

These references at the instance of the revenue have been made u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act) by

the Tribunal, Delhi Bench "A", Delhi, for the opinion of this court on the following question :

Whether, on the facts and in the circumstances of the case, capital gains arising on transfer of agricultural lands in village, Nangal Dewat, Delhi, is

chargeable to tax ?

2. The basic fact of the matter is not in dispute.

Facts of It Reference No. 478 of 1983

2.1 The petitioner possessed 154 bighas of agricultural land in Village Nangal Dewat, which is located near Delhi-Najafgarh Road adjoining Palam

Airport. The said land was acquired by the Government for extension of the Palam Airport vide Notification dated 3-12-1971 purported to be

issued u/s 4 of the Land Acquisition Act. A sum of Rs. 8,55,450 by way of compensation was awarded to the petitioner by the Land Acquisition

Officer vide his order dated 20-7-1973 where after possession of the said land was also taken over by the Government. However, the petitioner

did not declare any income under the head "Capital gains" on the ground that the agricultural land owned by him was not a capital asset within the

meaning of section 2(14) of the Act and, thus, the transfer did not result in capital gains.

2.2 The Income Tax Officer, however, did not accept his submission and held that the said land was situated within the jurisdiction of Municipal

Corporation of Delhi and by virtue of amendment made in the definition of "capital asset" with effect from 1-4-1970, the same became a capital

asset at the hands of the assessed. It was also noticed by the Income Tax Officer that the petitioner had not accepted the award of the Land

Acquisition Officer and filed appeal there against before the Additional District Session Judge claiming compensation at the rate of Rs. 40,000 per

bigha. Therefore, he took the view that the fair market value of the said land transferred by the petitioner as on the date of transfer exceeded the

full value of consideration declared by the petitioner in respect of the transfer by more than 15 per cent to the value declared and, on the said basis,

held that the provisions of section 52(2) of the Act were applicable in the case of the petitioner. Thereafter, he sought for and obtained approval of

the Inspecting Assistant Commissioner, Range-V(B), New Delhi, for substituting the consideration of the transfer which was fixed by the Income

Tax Officer at Rs. 61,60,000. The Income Tax Officer estimated the value of the land at Rs. 2,31,000 as on 1-1-1954, whereas the assessed

claimed that the value of the said land as on 1-1-1954 was liable to be worked out by applying a rate of Rs. 3,500 per bigha, but could not

support his submission in respect thereof. The Income Tax Officer rejected the assessed"s plea on the ground that the value of agricultural land in

1954 in the villages of Delhi was very low and held that the market value of the property as on 1-5-1954 was Rs. 1,500 per bigha. It was also

contended by the assessed before the Income Tax Officer that he had expended Rs. 35,000 on the improvement of land, whereas the Income Tax

Officer curtailed the said claim on the ground that only a little evidence was led in support thereof and determined the capital gains arising to the

petitioner at Rs. 36,05,117 as against "Nil" as declared by him.

2.3 As the variation in the income was more than Rs. 1 lakh, the Income Tax Officer forwarded a draft of the proposed order of assessment to the

assessed. There against several objections were made.

2.4 The proposed order along with the objections received was forwarded to the Inspecting Assistant Commissioner by the assessing officer, who

after giving an opportunity to the assessed, issued directions to the Income Tax Officer. The Income Tax Officer thereafter incorporated the said

directions and determined the income of the appellant at Rs. 36,25,366.

2.5 Aggrieved by and dissatisfied with the aforesaid order, the assessed preferred an appeal before the Appellate Assistant Commissioner which

was allowed in part.

The assessed again preferred an appeal before the Tribunal, which was allowed by the Tribunal.

2.6 On being moved for reference, the question, as set out above, has been referred for opinion of this court.

We need not to go in great details of the facts of IT Reference No. 479 of 1983, as the same are almost identical to IT Reference No. 478 of

1983.

3. Section 2(14)(iii) reads thus :

(14) "capital asset" means property of any kind held by an assessed, whether or not connected with his business or profession, but does not

include

(i) and (ii)** ** **

(iii) agricultural land in India, not being land situate

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area

committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten

thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to

in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant

considerations, specify in this behalf by notification in the Official Gazette;

The aforesaid provision, in our opinion, is absolutely clear and unambiguous.

3.1 A bare perusal of the aforementioned provision would clearly go to show that "capital assets" means property of any kind held by an assessed,

whether or not connected with his business or profession, but does not include any stock-in-trade, consumable stores or raw materials held for the

purposes of his business or profession; and personal effects, that is to say, movable property (including wearing apparel and furniture, but

excluding jewellery) held for personal use by the assessed or any member of his family dependent on him.

3.2 It may be true that the expression used therein is not very happy and could have been more explicit, but in terms thereof, if the land is situated

in an area, which is comprised within the jurisdiction of a municipality and has a population of not less than 10,000 (sic). The land must be situated

in a municipality or a cantonment board. Had the intention of the law-makers been that the land situated in a village of not less than 10,000 will

come within the purview of section 14(2)(iii) of the Act, there was no reason as to why the same could not have been explicitly stated in the

statute.

3.3 It is now a well-settled principle of law that a literal meaning should be attributed to a statute. The golden rule of interpretation should ordinarily

be adhered to.

3.4 In Gurudevdatta VKSSS Maryadit and Others Vs. State of Maharashtra and Others,

, it has been held :

It is a cardinal principle of interpretation of statute that the words of statute must be understood in their natural, ordinary or popular sense and

construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in

the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning.

It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to

that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the lawgiver. The courts have

adhered to the principle that efforts should be made to give meaning to each and every word used by the Legislature and it is not a sound principle

of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable

within the contemplation of the statute.

The said principle was reiterated in Dental Council of India and Another Vs. Hari Parkash and Others,

3.5 Yet again in P.K. Unni Vs. Nirmala Industries and others [OVERRULED],

in the following lines :

14. The court must indeed proceed on the assumption that the Legislature did not make a mistake and that it intended, to say what it said : See

Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others,

Assuming there is a defect or an omission in the words used by the Legislature, the court would not go to its aid to correct or make up the

deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an

intelligible result. "No case can be found to authorise any court to alter a word so as to produce a causes omissis : Per Lord Halsbury, Mersey

Docks v. Henderson (1888) 13 AC 595. "We cannot aid the Legislature"s defective phrasing of an Act, we cannot add and mend, and, by

construction, make up deficiencies which are left there": Crawford v. Spooner (1846) 6 Moore PC 1, 8, 9,

Where the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the court can, of course, adopt a

construction which will carry out the obvious intention of the Legislature. In doing so "a Judge must not alter the material of which the Act is

woven, but he can and should iron out the creases.": Per Denning, L.J., as he then was, Seaford Court Estates v. Asher (1949) 2 All ER 155,

164. See the observation of Sarkar, J. in M. Pentiah and Others Vs. Muddala Veeramallappa and Others,

3.6 The question referred to this court for its opinion is no longer rest integra in view of the decision of the Madras High Court in S. Hidhayathullah

Sahib Vs. Commissioner of Income Tax, , wherein it was held :

...The section lays down two criteria: (1) that the agricultural land should be in an area within the municipality; and (2) that the area should have a

population of more than 10,000. The expression ''which has a population of not less than ten thousand according to the last preceding census'' is

intended to qualify only the ''area'' and not the ''municipality''. However, it is not possible to go only by the language used in that provision without

having regard to the object and intendment of the provision. If the Legislature meant to fix a minimum limit of population for any area within a

municipality or cantonment Board, it would have specified a particular area such as village, ward, street, etc., and since the Legislature has left the

area in a municipality undefined, it would not have prescribed a limit of population for such an unspecified or indefinite area within a municipality. It

may be that a municipality may comprise of many, villages, wards and streets and each assessed may claim that the limit of population is provided

with reference to a village, ward or street. In such an event, the section will have no uniform application and will lead to many anomalies.

Therefore, it is necessary to avoid such an interpretation of the section which leads to anomalies and which will make it invalid. We have to adopt

such a construction which will make the section valid and certain.

Approving the aforesaid decision of the Madras High Court, the Apex Court in G.M. Omer Khan Vs. The Additional Commissioner of Income

Tax, A.P., Hyderabad,

held :

This, in our view, is the correct position and has aptly and pithily been put. Nothing more is needed to be said on the subject. The interpretation

put by the High Court on the provisions appears to us to be unexceptionable and rational. We affirm that interpretation.

3.7 This aspect of the matter has also been considered by a Division Bench of this court in Commissioner of Income Tax Vs. Pyare Lal,

The question involved herein is also covered by an unreported decision passed in IT Reference Nos. 184 and 185 of 1982, wherein Lahoti, J, as

his Lordship then was, by a judgment and order dated 31-7-1997 held :

The first question is covered by the decision of the Supreme Court in G.M. Omer Khan v. Addl. CIT (supra) approving the decision of the

Madras High Court in S. Hidhayathullah Sahib Vs. Commissioner of Income Tax,

wherein it has been held that population of the Municipality is to be taken into account for the purpose of section 2(14)(iii)(a) and not the

population in any area within the jurisdiction of Municipality.

The second question has to be answered in the light of the amendments made in the definition of ''agricultural income'' in clause (1A) of section 2

and the definition of ''capital asset'' in clause (14) of section 2 incorporated respectively, by the Finance Act, 1989 and the Finance Act, 1970 with

retrospective effect from 1-4-1970.

Accordingly, both the questions are answered in the negative, i.e., in favor of the revenue and against the assessed.

4. In this view of the matter, the question is answered in the negative, i.e., in favor of the revenue and against the assessed. However, in the facts

and circumstances of the case, there shall be no order as to costs.