

Buddaiah Vs. Commissioner of Income-tax, Karnataka-2

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Court : Karnataka

Decided On : Apr-16-1985

Reported in : (1985)48CTR(Kar)28; [1985]155ITR277(KAR); [1985]155ITR277(Karn); 1985(2)KarLJ128

Judge : K.S. Puttaswamy and ;S.R. Rajashekhara Murthy, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 11 and 16; [Income Tax Act, 1961](#) - Sections 2(47), 45, 46, 47, 48, 49, 54 and 54A

Appeal No. : Income-tax Referred Cases Nos. 87 and 88 of 1980

Appellant : Buddaiah

Respondent : Commissioner of Income-tax, Karnataka-2

Advocate for Def. : G. Sarangan and ;H.R. Raghavendra Rao, Adv.

Advocate for Pet/Ap. : S.G. Shivaram, Adv.

Judgement :

Rajasekhara Murthy, J.

1. The Income-tax Appellate Tribunal, Bangalore Bench, has referred the following question of law for our opinion under s. 256(1) of the I.T. Act, 1961, at the instance of the assessee :

'On the facts and in the circumstances of the case, whether the Tribunal was justified in law in holding that the capital gains in respect of survey Nos. 193, 206 and 207 was assessable to tax for the assessment year 1974-75 ?'

2. The assessee is a HUF owning some agricultural lands in Kodihalli village situated within the urban agglomeration of the City of Bangalore. Survey Nos. 193, 206 and 207/1 of the said village were acquired by the City Improvement Trust Board, Bangalore, in pursuance of the preliminary notification under s. 4 and final notification dated August 19, 1964, issued under s. 6 by the Land Acquisition Officer for, and on behalf of, the City Improvement Trust Board (CITB).

3. The possession of survey No. 206 was taken by the LAO, on April 21, 1973, and survey Nos. 193 and 207/1 on November 8, 1973.

4. In the assessment of the assessee for the assessment year 1974-75, the Income-tax Officer (ITO) brought to tax, under 'capital gains', the compensation received by the assessee in respect of the acquisition of three survey numbers by the CITB. The assessee challenged the assessment before the AAC who upheld the assessment in so far as survey Nos. 193 and 207/1 was concerned. In respect of survey No. 206, he held that the award was passed on March 29, 1973, and that, therefore the transfer took place during the accounting year relevant to the assessment year 1973-74 and not 1974-75. The assessment relating to 'capital gains' for this year in respect of the said survey number was, therefore, directed to be modified.

5. Both the ITO as well as the assessee preferred second appeals to the Tribunal. The Tribunal held that the possession of survey No. 206 was taken on April 21, 1973, and survey Nos. 193 and 207/1 was taken on November 8, 1973, and both these dates fell during the accounting year ended March 31, 1974, and upheld the assessment made by the ITO. The Tribunal thus dismissed the assessee's appeal and allowed the appeal of the Department. These two references arise out of the common order passed by the Tribunal for the assessment year 1974-75.

6. The common question that arise for our decision in these references is :

'Whether the income from capital gains arising out of transfer by acquisition of the lands during the previous year 1973-74 was rightly brought to tax in the assessment for the assessment year 1974-75

7. This question has to be answered with reference to the Land Acquisition Act read with s. 2(47) of the I.T. Act. The acquisition for the CITB was done by the Special Land Acquisition Officer appointed for this purpose by the Government under the Land Acquisition Act.

8. Under s. 45 of the I.T. Act, any profits or gains arising from the transfer of a capital asset effected in the previous year is chargeable to Income-tax under the head 'Capital gains' and shall be deemed to be the income of the previous year in which the transfer took place.

9. Under s. 2(47) of the I.T. Act, the term 'transfer' is defined as :

'transfer', in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law.'

10. Under this definition, compulsory acquisition under any law is also considered as a transfer for the purpose of computation of capital gains tax under s. 45 of the I,T, Act.

11. The acquisition for the CITB is done under the provisions of the Land Acquisition Act. The Land Acquisition Act, 1984, as amended and adopted by the State Government, provides for the acquisition of land for public purpose. The proceedings for acquisition start with a preliminary notification under s. 4 of the Act. The final proposal to acquires is notified under s. 6 of the Act.

12. After due enquiry as contemplated under the Act, an award is made proposing the amount of consideration and possession of land so acquired is taken by the Deputy Commissioner pursuant to the award made under s. 11. The lands acquired thereupon vest absolutely in the Government free from all encumbrances.

13. It is the contention of Shri Shivaram, learned counsel appearing for the assessee, that the transfer takes place when final notification under s. 6 is issued under the Land Acquisition Act and the title of the assessee to the lands ceases on such a notification being issued by the Government. He, therefore, submits that since the date of final notification in this case was issued on August 19, 1964, the assessment to capital gains in the assessment for the assessment year 1974-75 is not valid.

14. This contention of the assessee was rejected by the Tribunal following its decision in I.T.A. Nos. 73 and 499/75-76 in the case of P. Kannan, Mysore. The Tribunal had relied upon two decision reported as Neelkanth Mali v. Jagannath Singh, and Patel Gandadal Somnath v. State of Gujarat, : AIR1963 Guj50 , in Kannan's case which was the subject matter of a reference before this court in I.T.R.C. No. 119 of 1978 (Kannan v. CIT disposed of on December 12, 1984 - [1984] 154 ITR 441. It was held by this court in that case that the title to the lands vests on Government under s. 16 of the Land Acquisition Act on the taking of possession of the land by the Deputy Commissioner pursuant to an award passed under s. 11 of the Act. It is thus laid down by this court that the transfer under s. 11 of the Act. It is thus laid down by this court that the transfer of title in the lands acquired under the Land Acquisition Act passes to Government with the possession being delivered by the assessee as provided under s. 16 of the Act and this ruling would thus be relevant for purposes of answering these references.

15. In Fruit & Vegetable Merchants Union v. Delhi Improvement Trust, : [1957]1SCR1 , the word 'vest' within the meaning of s. 16 as it occurs in the Land Acquisition Act was interpreted by the Supreme Court as follows (pp. 350,353) :

'As will presently appear, the term 'vesting' has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership, or only possession for a particular purpose, or clothing the authority with power to deal with the property as the agent of another person or authorityThat the word 'vest' is a word of variable import is shown by provision of Indian statutes also. For example, s. 56 of the Provincial Insolvency Act (5 of 1920) empowers the court at the time of the making of the order of adjudication or

thereafter to appoint a receiver for the property of the insolvent and further provides that 'such property shall thereupon vest in such receiver'. The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, ss. 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain events, shall 'vest absolutely in the Government free from all encumbrances.' In the cases contemplated by ss. 16 and 17, the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word 'vest' has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly ss. 45 to 49 and 54 and 54A, when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them.'

16. The same was the view of the Full Bench of the Andhra Pradesh High Court in *Andhra Pradesh Agricultural University, Rajendra Nagar v. Mahmoodunnisa Begum*, : AIR 1976 AP134 . Their Lordships held that once an award is made and possession is taken, the lands automatically vest in the Government.

17. The assessee's contention, therefore, is contrary to the provisions of s. 16 of the Land Acquisition Act. Since the title of the owner of the lands acquired under the Land Acquisition Act passes to the Government on possession being taken by the Deputy Commissioner under s. 16 of the Act, the date of taking possession becomes relevant for purposes of s. 45 of the I.T. Act, so far as transfer of title is concerned.

18. In this view of the matter, the question of law referred by the Tribunal has to be answered in the affirmative and against the assessee.

19. The question is answered accordingly, and we hold that for the purposes of capital gains tax under s. 45 of the I.T. Act, the transfer of the lands acquired took place on April 21, 1973, and November 8, 1973, and during the previous year ending March 31, 1974, relevant for the assessment year 1974-75.

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