

Cit Vs. Surjan Singh

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Court : Delhi

Decided On : Oct-10-2002

Reported in : [2002]125TAXMAN1075(Delhi)

Appeal No. : IT Reference Nos. 444, 460, 473, 485, 516, 519, 572 of 1983 & 34, 55 & 56 of 1984 10 October

Appellant : Cit

Respondent : Surjan Singh

Advocate for Pet/Ap. : R.C. Pandey,; R.D. Jolly,; Ms. Prem Lata Bansal and;

Judgement :

D.K. Jain, J.

In these ten references, at the instance of the revenue, the Tribunal, New Delhi has referred under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') the following question for our opinion :

'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. Since in all the references an identical question has been referred, these are being disposed of by this common order.

3. As the format of the question itself suggests, the issue arising for consideration is whether the agricultural land in village Nangal Dewat constitutes a capital asset within the meaning of section 2(14)(iii)(a) of the Act and exigible to capital gain taxed on its transfer.

4. The question posed being purely legal, it is unnecessary to state the facts of each of the cases, except to note that all the references pertain to the assessment year 1974-75.

5. We have heard Mr. R.C. Pandey and Mr. R.D. Jolly, senior standing counsel for the revenue and Mr. R.P. Bansal, learned senior counsel for the assessed.

6. In our view, the question referred for our opinion is no longer *res integra* in view of the decision of the Madras High Court in *S. Hidhayathullah Sahib v. CIT* (1986) 158 ITR 201, approved by the Apex Court in *G.M. Omer Khan v. Addl. CIT* : [1992]196ITR269(SC) ; the decision of this court in *CIT v. Pyare Lal* : [1998]231ITR785(Delhi) and a recent unreported decision in the case of *CIT v. Deep Chand* (IT Reference Nos. 478-479 of 1983). Section 2(14) of the Act defines 'capital asset', as property of any kind held by an assessed. The expression 'property of any kind' in the context of the section is so widely defined as to include within its ambit property of any kind other than that comprised in the exceptions carved out in the definition itself. One of the exceptions is in respect of agricultural land, not being situated in a particular area, mentioned therein. In the aforementioned decisions of this court, involving agricultural lands in the same village, namely, Nangal Dewat, it has been held that it is the population of the municipality, as a whole and not of any part area of it, that has to be taken into account for the purpose of section 2(14)(iii)(a) to determine whether property in a particular area is exigible to capital gains. It was said that the part of the sentence 'which has population of not less than ten thousand' refers to municipality or a cantonment board and not to any area comprised in the erstwhile village or any fraction of the area constituting the municipality or cantonment board.

7. However, it is vehemently submitted by Mr. Bansal, learned counsel for the assessed that the aforementioned decisions of this court need reconsideration because the course has not taken into consideration a vital fact that during the relevant

period, there was no notification under section 507 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the DMC Act) declaring the rural area of the village as forming part of the urban area. The submission is that in the absence of such a notification, the village continues to be the rural area, beyond the control of the Municipal Corporation of Delhi and would, therefore, not fall within the ambit of section 2(14)(iii)(a) of the Act.

8. We are not impressed with the argument of learned counsel for the assessed. Sub-section (2) of section 1 of the DMC Act, which came into force on 28-11-1957, read with sub-section (10) of section 2 of the Act holds that the DMC Act extends to the entire Union Territory of Delhi, comprising rural and urban areas. Village Nangal Dewat being within the Union Territory of Delhi, falls within the Municipal area for the purposes of levy of capital gains tax under the Act. However, for the purposes of the DMC Act, section 507 of the said Act, sets out some special provisions for rural areas.

9. Section 507 of the DMC Act reads as follows :

'507. Special provisions as to rural areasNotwithstanding anything contained in the foregoing provisions of this Act,

(a) the Corporation with the previous approval of the government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;

(b) the Corporation with the previous approval of the government may, by notification in the Official Gazette,

(i) exempt the rural areas or any portion thereof from such of the provisions of this Act as it deems fit,

(ii) levy taxes, rates, fees and other charges in the rural areas or any portion thereof at rates lower than those at which such taxes, rates, fees and other charges are levied in the urban areas or exempt such areas or portion from any such tax, rate, fee or other charge;

(c) the Corporation shall pay a Gaon Sabha

(i) an amount equal to the proceeds of the tax on profession, trades, callings and employments, as and when that tax is levied in the Gaon Sabha area, and

(ii) an amount equal to such portion of the proceeds of the property taxes on lands and buildings in that area as may from time to time be determined by the Corporation,

after deducting the cost of collection from such proceeds.'

10. The section merely provides that with the previous approval of the government, the Corporation may, by notification in the Official Gazette : (a) declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification, that portion of the rural area shall be included in and form part of the urban area; (b) exempt the rural areas or any portion thereof from such of the provisions of the DMC Act like levying taxes and other fees, etc., as it deems fit; and (c) as and when any tax or fee etc., is levied in the Gaon Sabha area, a specified amount out of it shall be paid to Gaon Sabha. A bare reading of the section makes it clear that this provision confers special powers on the Corporation to deal with the rural areas falling within its jurisdiction for the purpose of various provisions of the Act including the levy of taxes etc. As a matter of fact, section 507 presupposes that the rural areas, within the Union Territory of Delhi, in respect of which a notification can be issued, fall within the municipal limits. Even otherwise it is not the case of the assessed that village Nangal Dewat does not fall within the municipal limits. It is only claimed that it has not been urbanised.

11. In this behalf it would be advantageous to refer to a decision of this court in *Naresh Kumar v. Union of India* (1994) (31) DRJ 621 (Del). In that case the property was situated in the revenue estate of village Bijwasan, Tehsil Mehrauli, New Delhi which is a rural area. The petitioner, disputing the right of the DMC to recover tax on its property, had submitted that the building constructed on the property was being used for agricultural purposes and was not liable to be taxed also because it was situated in a rural area. Repelling the said contention, it was

held that rural areas of Delhi were also part of 'Delhi' as contemplated by section 2(52) of the DMC Act.

12. In that view of the matter, we feel that section 507 of the DMC Act has no bearing insofar as the applicability of section 2(14)(iii)(a) of the Act is concerned. The relevant portion of the section reads as under :

'(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

Sub-clause (a) postulates only two conditions, namely (i) that the agricultural land should be in an area within the municipality, and (ii) the area should have population of more than 10,000. The controversy which had arisen earlier and now stands resolved was whether it was only the population of the area concerned which was to be taken into account for the purposes of the said clause or the population of the municipality, within whose jurisdiction the area falls. Both the said conditions are attracted in respect of the subject land.

13. We, therefore, do not find any substance in the contention of learned counsel for the assessed that the earlier decisions of this court require reconsideration.

14. In the light of the above-noted authoritative pronouncements, the question is answered in the affirmative, 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.