

SINGHAI RAKESH KUMAR
v.
UNION OF INDIA AND ORS.

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NOVEMBER 28, 2000

[S.P. BHARUCHA, DORAISWAMY RAJU AND RUMA PAL, JJ.]

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Income Tax Act, 1961: Sections 2(1A) and 2(14) (iii) (a) and (b).

Income Tax—Capital gains tax—AYs 1981-82 and 1983-84—Agricultural lands situated within municipal limits—Sale of—Profits arising from—Exigibility to capital gains tax—Held, income arising from transfer of agricultural lands falls outside the ambit of 'agricultural income'—Hence, such income liable to capital gains tax—Income Tax Act, 1922—ss.2 (1) (A) and 2(4A) (iii).

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Constitution of India, 1950:

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Article 366, Schedule VII List II Entry 46—Agricultural income—Definition of—Parliament's Power to define—Held: Parliament has power to define what agricultural income is—Hence, amendment of S.2 (14) of the Income Tax Act, 1961 is good in law.

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Words and Phrases:

"Agricultural Income"—Meaning of—In the context of Art. 366(1) of the Constitution of India, 1950.

Appellant-assessee, in the previous years relating to Assessment Years 1981-82 and 1983-84, sold agricultural lands, which were situated within a municipal area and made capital gains thereon. Income Tax Officer made the assessee liable to capital gains tax. But the Income Tax Appellate Tribunal held that the profit on the sale of agricultural lands was not capital gains under the Income Tax Act, 1961. High Court allowed the Revenue's appeal. Hence this appeal.

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Dismissing the appeal, the Court

HELD: 1. Income arising from the transfer of agricultural land that

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A falls within the terms of items (a) and (b) of sub-clause (iii) of clause (14) of Section 2 of the Income Tax Act, 1961 falls outside the ambit of revenue derived from land and, therefore, outside the ambit of 'agricultural income' as defined in Article 366(1) of the Constitution of India, 1950. Such income, therefore, is liable to capital gains tax chargeable under Section 45 of the Income Tax Act. [116-C]

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Manubhai A. Sheth v. N.D. Nirgudkar, 128 ITR 87 (Bom.), referred to.

C 2.1. Under the terms of the Constitution, Parliament is empowered to legislate to say what 'agricultural income' means. What Parliament says in this regard in the statute then current relating to income tax is the definition of 'agricultural income' for the purpose of the Constitution. In regard to such agricultural income the States may legislate. In regard to all other incomes it is for the Parliament to legislate. [115-B]

D *Bajaya v. Gopikabai*, [1978] 2 SCC 542 and *Karimtharuvi Tea Estates Ltd. v. State of Kerala*, [1963] 1 Supp. SCR 823, relied on.

E 2.2. Parliament has the power to define what agricultural income is in the Income Tax Act; the amendments of sub-sections (2) and (14) of Section 2 of the Income Tax Act are, therefore, good in law. The effect is that the assessee is liable to pay capital gains tax on the sale of his lands within the municipal limits. [116-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 15619-15620 of 1996.

F From the Judgment and Order dated 8.4.96 of the Madhya Pradesh High Court in W.P. No. 31/96 and M.C.C. No. 735 of 1987.

B.Sen, Prakash Shrivastava and Ms. Pradipti Shrivastava for the Appellant.

G M.L. Verma, Pritish Kapoor, S.W.A. Qadri, Dhonajay Kr. Singh and Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

H **BHARUCHA, J.** Under challenge are the orders of a Division Bench of the High Court of Madhya Pradesh dismissing a writ petition filed by the appellant-assessee and answering against him a reference made by the Income Tax Appellate Tribunal of the following question :

“Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the profit arising from the sale of agricultural lands did not amount to capital gains within the meaning of Income Tax Act, 1961?”

The reference related to the Assessment Years 1981-82 and 1983-84.

In the previous years relevant to the Assessment Years 1981-82 and 1983-84 the assessee sold agricultural lands which were situated within the municipal limits of Bina. He made capital gains thereon and the Income Tax Officer made him liable to capital gains tax. The first appellate authority agreed with the Income Tax Officer and the assessee approached the Tribunal. The Tribunal held that the profit on the sale of agricultural lands was not capital gains within the meaning of the provisions of the income Tax Act, 1961. From the order of the Tribunal the question aforesaid was referred to the High Court. Pending the reference, the assessee filed in the High Court the writ petition the order upon which is impugned. The writ petition asked the High Court to declare as unconstitutional the Explanation to sub-section (1A) and clause (iii) of sub-section (14) of Section 2 of the Income Tax Act, 1961 and to declare that capital gains arising from the sale of agricultural lands within a municipal area were not liable to capital gains tax under the Income Tax Act, 1961. The High Court dismissed the writ petition and answered the reference against the assessee.

Article 366 defines, in clause (1), ‘agricultural income’ to mean “agricultural income as defined for the purposes of the enactments relating to Indian Income-tax”. Entry 46 of List II of the Seventh Schedule of the Constitution speaks of “Taxes on agricultural income”; in other words, it is for the States to legislate on the subject of taxes on agricultural income. Entry 82 of List I of the Seventh Schedule reads “Taxes on income other than agricultural income”; in other words, it is for the Union to legislate on the subject of taxes on income other than agricultural income.

In the Income Tax Act, 1922 ‘agricultural income’ was defined in clause (1) of Section 2. Sub-clause (a) thereof alone is relevant for our purpose. Thereunder, ‘agricultural income’ meant “any rent or revenue derived from land which is used for agricultural purposes”. Section 2 (4A) defined ‘capital asset’ to mean “property of any kind held by an assessee” but not “any land from which the income derived is agricultural income”.

It was submitted by learned counsel for the assessee that ‘agricultural

- A income' in clause (1) of Article 366 must be read only as it was defined in 1950 when the Constitution came into force; that is to say, in the manner indicated in Section 2(1)(A) and 2(4)(A)(iii) of the 1922 Act. To decide the correctness of the submission, it is necessary to give true meaning to clause (1) of Article 366. 'Agricultural income' thereunder means "agricultural income as defined for the purposes of the enactments relating to Indian Income-tax".
- B The definition does not say that 'agricultural income' means "agricultural income as defined in the 1922 Act". It does not even say that it means "agricultural income as defined for the purposes of the enactment relating to Indian Income-tax". It says that it means "agricultural income as defined for the purposes of the enactments relating to Indian Income-tax". The use of the plural 'enactments' is very relevant. It means that agricultural income for the purposes of the constitution means agricultural income as it is defined at the relevant time in the enactment that then relates to Income-tax.
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In the judgment of this Court in *Bajaya v. Gopikabai & Anr.*, [1978] 2 SCC 542 the position in law, as applicable here, is stated thus:

- D "Broadly speaking, legislation by referential incorporation falls in two categories: First, where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. Second, where a statute incorporates by general reference the law concerning a particular subject, as a genus. In the case of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of latter category, it may be presumed that the legislative intent was to include all the subsequent amendments also made from time to time in the generic law on the subject adopted by general reference. This principle of construction of a reference statute has been neatly summed up by Sutherland, thus:
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A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted .

- G Corpus Juris Secundum also enunciates the same principle in these terms :

.....Where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof, the reference will be held to

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include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as far as the changes are consistent with the purpose of the adopting statute.” A

Under the terms of the Constitution, Parliament is empowered to legislate to say what ‘agricultural income’ means. What Parliament says in this regard in the statute then current relating to income tax is the definition of ‘agricultural income’ for the purposes of the Constitution. In regard to such agricultural income the States may legislate. In regard to all other income it is for Parliament to legislate. (See *The Karimtharuvi Tea Estates Ltd., Kottayam & Anr. v. State of Kerala & Ors.*, (1963) 1 Supp. SCR 823. B C

It is in this background that the impugned amendments in the 1961 Act may be seen. Clause (1A) of Section 2 defined ‘agricultural income’ to mean, *inter alia*, “any rent or revenue derived from land which is situated in India and is used for agricultural purposes”. Clause (14) of Section 2 defined ‘capital asset’ to mean “property of any kind held by an assessee in India but does not include agricultural land in India.....”. The words ‘agricultural land in India’ were substituted by the Finance Act, 1970 with effect from 1st April, 1970 to read thus : D

“(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 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 E F

(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;” G

It appears that by reason of the decision of the Bombay High Court in *Manubhai A. Sheth & Ors. v. N.D. Nirgudkar, 2nd Income-Tax Officer, A-II Ward, Bombay & Anr.*, [128 I.T.R. 87], an Explanation was added by the H

A Finance Act, 1989, with effect from 1st April, 1970, to clause (1A) of Section 2 which read thus :

“Explanation - For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this Section;”

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C The position, as a result, is that income arising from the transfer of agricultural land that falls within the terms of items (a) and (b) of sub-clause (iii) of clause (14) of Section 2 falls outside the ambit of revenue derived from land and therefore, outside the ambit of ‘agricultural income’. Such income, therefore, is liable to capital gains tax chargeable under Section 45 of the 1961 Act.

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Parliament has, as aforesaid, the power to define what agricultural income is in the 1961 Act; the amendment of sub-sections (2) and (14) of Section 2 thereof in the manner aforesaid are, therefore, good in law. The effect is that the assessee is liable to pay capital gains tax on the sales of his lands within the municipal limits of Bina.

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We are of the view, therefore, that the High Court was right in the conclusions that it came to. The appeals are dismissed with costs.

V.S.S.

Appeals dismissed.