Singhai Rakesh Kumar vs Union Of India & Ors on 28 November, 2000

Equivalent citations: AIR 2001 SUPREME COURT 390, 2001 (1) SCC 364, 2000 AIR SCW 4285, 2001 TAX. L. R. 187, 2001 (4) LRI 688, 2000 (3) JT (SUPP) 248, (2001) 115 TAXMAN 101, 2000 (10) SRJ 396, (2000) 164 CURTAXREP 483, (2001) 247 ITR 150, (2001) 160 TAXATION 363, (2000) 4 SCJ 491, (2001) 1 CURLJ(CCR) 384, (2000) 7 SCALE 666, (2000) 7 SUPREME 697

Bench: S.P.Bharucha, Doraswaimy Raju, Ruma Pal

CASE NO.:
Appeal (civil) 15619-15620 1996

PETITIONER:
SINGHAI RAKESH KUMAR

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 28/11/2000

BENCH:
S.P.Bharucha, Doraswaimy Raju,, Ruma Pal

JUDGMENT:

Bharucha, J.

L.....I.....T.....T.....T.....T.....T.....T..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 ncome Tax Act, 1961. From the order of the Tribunal the question aforestated 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 H gh 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 are 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 agr cultural 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 t 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 agricult ral 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 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 rel ting to Indian Income-tax. 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 I dian 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 onstitution means agricultural income as it is defined at the relevant time in the enactment that then relates to Income-tax.

In the judgment of this Court in Bajaya vs. Gopikabai & Anr. [1978(2) SCC 542] the position in law, as applicable here, is stated thus: 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 eference 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 t at 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 Sutherl nd, thus:

> 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 enacte .
>
> Corpus Juris Secundum also enunciates the same principle in these terms :
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> .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 include the law as it stands at the time it is sought to be app ied, 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.
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> 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 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. Vs. State of Kerala & Ors., [1963(1) agricultural income for the p urposes of the Constitution. upp. SCR 823].) 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 Ac , 1970 with effect from 1st April, 1970 to read thus : (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
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> (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 o that area and other relevant considerations, specify in this behalf by notification in

the Official Gazette;

It appears that by reason of the decision of the Bombay High Court in Manubhai A. Sheth & Ors. Vs. N.D. Nirgudkar, 2nd Income-Tax Officer, A-II Ward, Bombay & Anr. [128 I.T.R. 87], an Explanation was added by the Finance Act, 1989, with effect from 1st A ril, 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;

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, utside the ambit of agricultural income. Such income, therefore, is liable to capital gains tax chargeable under Section 45 of the 1961 Act.

Parliament has, as aforestated, 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 aforestated are, therefore, good in law. The effect is that the assessee is li able to pay capital gains tax on the sales of his lands within the municipal limits of Bina.

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.