G.M. Omer Khan vs The Additional Commissioner Of ... on 28 August, 1991

Equivalent citations: AIR1992SC107, [1992]196ITR269(SC), 1992SUPP(3)SCC33, AIR 1992 SUPREME COURT 107, 1991 AIR SCW 2790, 1992 TAX. L. R. 40, 1992 (3) SCC(SUPP) 33, (1992) 63 TAXMAN 533, (1992) 111 TAXATION 243, (1992) 106 CURTAXREP 288

Bench: Madan Mohan Punchhi, K. Ramaswamy

ORDER

1. This appeal by certificate is against the advisory judgment dated 27-9-1977 of a Division Bench of the High Court of Andhra Pradesh in Reference No. 18 of 1976, reported in (1979) 116 ITR 950 : 1978 Tax LR 170 titled Addl. Commr. of Income-tax, A.P. v. G. M. Omerkhan.

2. Out of the four questions referred to the High Court, only two have survived for agitation. On question No. 1, whether on the facts and in the circumstances of the case, the lands acquired by the Government were agricultural lands, the answer has been in favour of the assessee holding that the lands acquired were agricultural lands. On question No. 4, whether on the facts and in the circumstances of the case, the mere claim of the assessee for additional compensation can be taken into account for purpose of determining the capital gains derived by the assessee, has gone in favour of the assessee and against the Revenue.

3. The following two questions survive answered against the assessee :

> 2. Whether on the facts and in the circumstances of the case, the interpretation given by the Tribunal based upon the definition of 'capital asset' in Section 2(14)(iii)(a) of the Income-tax Act, 1961, is correct?
>
> 3. Whether the profits or gains arising from the transfer of a 'capital asset' can be chargeable to income-tax' if the transfer is effected in the previous year and if no amount is received?
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> 4. The assessee-appellant is an individual.He was owner of a property known as Khader Bagh situated within the municipal limits of Hyderabad but in the Revenue Estate of Village Gaddiamalkapur. The property comprised of buildings and land measuring 45 acres and 10 guntas. An extent of the said property stood requisitioned by the Central Government under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952. Later the Government took decision to acquire there from an area to the extent of 36 acres and 22 guntas. Procedure under Section 7(1) of the said Act was followed by issuing a notice to the assessee and after

hearing him the Government decided to acquire the property by passing a formal order on 27-2-1970. The publication in the Official Gazette in terms thereof under Section 7(2) was made on March 12, 1970. Under the said provision the title is ordained to pass to the Central Government on the date of the publication of the notification, i.e., on March 12, 1970, and that event has been held to be taxable for the purpose on account of the capital gains having arisen from that date and hence exigible to tax. On the question of the interpretation of 'capital asset' in terms of Section 2(14)(iii)(a) of the Income-tax Act, 1961, as it stood at the relevant time, the plea of the assessee was that his land was in an area which in terms meant a 'village' and the population of that village was far below ten thousand. It was further maintained that the mere fact that the said area fell within the municipality of Hyderabad, even though having population of more than ten thousand, was of no consequences. The High Court interpreting Section 2(14)(iii)(a) of the Act opined on question No. 2 that the property acquired was a 'capital asset' as the words 'which has got a population of more than 10 thousand' in the Section would qualify only 'the municipality or cantonment' and not the expression 'area' and therefore the capital gains arising out of the sale of the land in question could not be exempted under the said Section. Section 2(14)(iii)(a) is set out below :

2(14)(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.

5. We have heard learned Counsel for the assessee-appellant and have been taken through the judgment of the High Court as also the other relevant papers. A close reading of Section 2(14)(iii)(a) suggests that agricultural lands comprised within the jurisdiction of municipality, etc., in the nature of things being of a higher value in comparison, were brought within the scope of taxation and not all agricultural lands. Pressure on land in the vicinity of towns being what it is profits likely to arise in its transactions would rightly catch the ear and imagination of the tax man as a fertile area for his share of the harvest. Therefore, the said provision bears an evident contrast and defining between land in an area within the jurisdiction of the municipality etc. and lands outside thereof. The limit of population fixed is to identify the focal point where transactions of lands attract taxation.

6. It is common knowledge that in the entire country local self-Government is carried out under various statutes by means of municipalities, Municipal Corporation, cantonment boards etc. After their initial set up, areas by means of those laws are added to and subtracted from and subsume as such for identity, not as a separate municipal unit but part of the already set up municipal unit. Such being the scheme of things, it is difficult to accept the plea of the appellant that even though his village was falling in the municipal area of Hyderabad it retained its identity as a village and hence

an 'area'so as to stand apart for the purposes of Section 2(14)(iii)(a) of the Act. In S. Hidayathullah Sahib v. Commr. of Income-tax , the Madras High Court following the instant judgment under appeal held as under (at p. 191 ofTaxLR) :

> A close reading of Section 2(14)(iii)(a) seems to suggest that it is the population of the municipality that has to be taken into account for the purpose of that section and not the population of any area within the municipality. It is no doubt true that the language used in Clause (iii) of Section 2(14) is somewhat misleading. 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 assessee 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.

7. 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.

8. The other contention about fixing the date of passing of title in the land in the event of acquisition is just to be noticed and rejected. In the presence of Sub-section (2) of Section 7, there is no scope to apply Sub-section (1) of Section 7 to determine when factually the property was ordered as acquired and if at all on 27-2-1970, the date when the acquisition was approved by the Government. The legal mandate is in Sub-section (2) of Section 1 which says that the date of the publication of the notification is the date when the property acquired vests absolutely in the Central Government and on that date requisitioning of such property shall end. In other words prior to that date the requisition subsisted, and subsisting it would on the premises that it kept owned by the person till the land on acquisition terminated the requisition.

9. Both the questions above, in our view, were rightly answered against the assessee and in favour of the Revenue. Accordingly, we find no merit in this appeal and dismiss it but without any order as to costs.