

Commissioner Of Income-Tax, Delhi And ... vs Shri Govind Commercial Co. (P.) Ltd. on 27 October, 1965

Equivalent citations: [1966]61ITR169(SC), AIRONLINE 1965 SC 14, (1966) 61 ITR 169

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Sikri, J.

1. This appeal by special leave is directed against the judgment of the High Court of Rajasthan, rejecting the application under section 66(2) of the Income-tax Act, filed by the appellant.

2. For the assessment for 1958-59, the Income-tax Officer disallowed loss of Rs. 45,676 incurred by the respondent, M/s. Shri Govind Commercial Co. (P.) Ltd., Jaipur, hereinafter referred to as the assessee, on the ground that this loss was incurred in speculative transaction on a large scale in hessian and gunny bags. It is noted in the order that "Shri M. L. Sharma admitted that the transactions were of a speculative nature since the deliveries were not taken". Apparently, this admission was not understood properly by the Income-tax Officer because the assessee filed an appeal before the Appellate Assistant Commissioner and contended that the admission was only to the effect that delivery of goods was not taken. On the merits, it was contended before the Appellate Assistant Commissioner that the assessee did not take physical delivery of the goods but received the delivery orders according to the terms of the contract for purchaser and, similarly, it made over the delivery order as per the terms of the sale contracts. It was further argued that this receiving and making over of delivery orders was tantamount to "actual delivery or transfer of the commodity or scrips" within the meaning of Explanation 2 to section 24(1). The assessee relied on the decision of this court in Duni Chand Rataria v. Bhuwalka Brothers Ltd. The Appellate Assistant Commissioner, however, rejected the contentions of the assessee and, distinguishing the decision of this court in Duni Chand Ratarias case, upheld the order of the Income-tax Officer. The Appellate Tribunal, on appeal, accepted the contentions and held that the decision of the Supreme Court governed the case, and that, on the facts, it was satisfied that this was not a case where the transactions were settled by payment of differences. It found that payment had been made for full value of the goods purchased, and, therefore, the transactions could not be regarded as speculative transactions. The Appellate Tribunal further held that the term "scrips" occurring in Explanation 2 to section 24(1) could refer to scrips pertaining to any commodity and there was no warrant for saying that it should refer to stocks and shares alone. This was with reference to the argument of the assessee that Explanation 2 was not confined to actual delivery or transfer of commodity but spoke of delivery or transfer of scrips also.

3. The Commissioner of Income-tax thereupon filed an application under section 66(1), raising the following two questions :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was actual delivery of the commodity within the meaning of Explanation 2 to section 24(1) of the Indian Income-tax Act, 1922 ? and (2) Whether, on the facts and in the circumstances of the case, the term 'scrips' in Explanation 2 to section 24(1) of the Indian Income- tax Act, 1922, can refer to scrips pertaining to any commodity or to stocks and shares alone ?"

4. The Appellate Tribunal rejected the application on the ground that the questions raised by the Commissioner of Income-tax were already well- settled by the decision of this court in Duni Chand Rataria's case. The Commissioner of Income-tax then filed an application under section 66(2) of the Income-tax Act before the High Court. The High Court, in a short order, dismissed the application. The High Court observed as follows :

"We have heard learned counsel and are inclined to the view taken by the Tribunal that the first question which is sought to be raised is covered by the principle of the decision of their Lordships of the Supreme Court in Duni Chand v. Bhuwarka Brothers Ltd. In that view of the matter, the second question does not arise at all."

5. The learned Solicitor-General, who appears on behalf of the revenue, contends that the High Court should not have rejected this application under section 66(2) because the question referred to above were arguable questions of law. He says that the first question is not concluded by the decision of this court in Duni Chand Rataria's case. He further contends that the Calcutta High Court has in an unreported judgment in D. M. Wadhwana v. Commissioner of Income-tax, distinguished the Supreme Court decision in Duni Chand Rataria's case and has taken the view that the words "actual delivery" in Explanation 2 to section 24(1) do not only mean physical delivery. We need not express an opinion at this stage on the soundness of the view of the Appellate Tribunal in the present case, or the view taken by the Calcutta High Court in the above unreported case. We are of the opinion that fairly arguable questions of law arise and the High Court should have directed the Appellate Tribunal to state the case and refer it to the High Court.

6. Accordingly, the appeal is accepted and we direct the appellate Tribunal to state the case and refer it to the High Court. In the circumstances of the case, there will be no order as to costs in this court.

7. Appeal allowed.