Raja J. Rameshwar Rao vs Commissioner Of Income-Tax, Hyderabad on 7 March, 1961

Equivalent citations: AIR1963SC352, [1961]42ITR179(SC)

Bench: J.C. Shah, J.L. Kapur, M. Hidayatullah

JUDGMENT

Hidayatullah, J.

1. This is an assessee's appeal, with the special leave of this court, against a judgment of the High Court of Andhra Pradesh on a reference under section 82(1) of the Hyderabad Income-tax Act, corresponding to section 66(1) of the Indian Act. The Tribunal referred four questions of law arising out of order; but we are concerned only with questions Nos. 2 and 3 to be mentioned later.

2. The assessee, Raja J. Rameshwar Rao, is a jagirdar of the Wanaparthi Samasthan in the former State of Hyderabad. He was being assessed as an individual on income from the jagir and from other sources. In his jagir, there was a village, Madanapur by name. In the year of account 1946 (1356 Fasli) corresponding to the year of assessment, 1947 (1357 Fasli), he acquired the Makhta of the village for Rs. 25,000. He also purchased 217 acres land from the pattadars, paying them in the year of account Rs. 19,186 out of a total consideration of Rs. 25,502. He constructed on portion of the land so acquired a Ganj and shops. The rest of the land he laid out as plots, which he sold for Rs. 75,820. In computing his assessable income, Rs. 75,820 were added as receipt from business. He appealed to the Appellate Officer and the Tribunal, but without success. His appeals contained many others matters, with which we are not concerned; but he claimed that Rs. 75,820 could not be included in his assessable income and also that the expenses amounting to Rs.70,686/- (Rs. 25000 plus Rs.19,186/- plus Rs. 26,500/-) should be deducted as allowable expenses within the meaning of S. 14 (5)(a) of the Hyderabad Income-tax Act.

3. The question which were referred by the Tribunal to the High Court were :

> "2. Whether there was evidence on which the Tribunal could have come to the conclusion that the sum of Rs. 75,820 was assessee's income from business ? and
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> 3. If the answer to question No. 2 is in the negative, whether the assessee is entitled to claim as a revenue expenditure the money spent by him on the acquisition of the village of Madanapur, on the construction of houses, etc., and on the acquisition of 217 acres of land ?"

4. The High Court held that the first question was one of fact, and there was evidence to support the finding and answered the question in the affirmative. The second question was reframed by the High Court by adding the words "without deducting therefrom the sale proceeds of the plots sold by him amounting to Rs. 75,820" at the end of the question framed by the Tribunal. This question, the High Court answered against the assessee.

5. In this appeal, we are only concerned with the first question, because it that question be answered in the affirmative, as did the High Court, the second question would not arise. It was contended that whether there was a business and profit from it was not a question of pure fact but a mixed question of law and fact, and that the High Court was in error in treating it as a question of fact. In our opinion, this contention hardly arises, because the High Court examined the record, and came to the conclusion that there was evidence to support the finding, and that is the matter upon which the question was referred for the opinion of the High Court. In our opinion, the High Court answered the question correctly. No doubt, this was only a single venture; but even a single venture may be regarded as in the nature of trade or business. When a person acquires land with a view to selling it later after the developing it, he is carrying on an activity resulting in profit, and the activity can only be described as a business venture. Where the person goes further and divides the land into plots, develops the area to make it more attractive and sells the land not as a single unit and as he bought it but in parcels, he is dealing with land as his stock-in-trade; he is carrying on business and making a profit. This is exactly what had happened in the assessee's case.

6. It was contended that it was part of the duty of the jagirdar to provide amenities and to undertake words of public welfare, that this was nothing more than acquiring land to construct a market, and that what was sold was not sold in the way to business but as something which was left over, after effecting public utility. In our opinion, the evidence showed that the matter went beyond the provision of marketing facilities to the inhabitants of Madanapur. The acquisition of the village and vast area of land, which certainly was not all needed for a market, the development of the land, laying out of plots and their subsequent sale, go beyond what can be described as a work for public welfare. We are not concerned with what is the correct opinion of this undertaking; we are more concerned to see if there was evidence to support the conclusion that this was a venture in the nature of trade or business, and looking at the matter from that angle, we cannot say that it was not. The answer given by the High Court was thus correct.

7. We were referred to section 14(5)(a), under which the jagirdar is allowed to deduct any expenditure he might have made over works of public welfare or utility. That section deals with "other sources" and not with the head "business". We have already said that the income from the sale of lands was by way of business, and section 14(5)(a) cannot be called in aid to show that the sale of land was also for public welfare. In any event, the expenditure has been allowed to the assessee, and the only question is whether the income from the sale of land was properly included in his assessable income. We have shown above that it was properly included.

8. In the result, the appeal fails and is dismissed with costs.

9. Appeal dismissed.