

Bishambhar Nath Niranjanaal vs Commr. Of Income-Tax, U.P., Lucknow on 8 January, 1953

Equivalent citations: AIR1953ALL757, AIR 1953 ALLAHABAD 757

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. In this reference under Section 66 (1), Indian Income-tax Act, the question referred to us for decision reads as follows:

"Q. Whether, in the circumstances of the case, the profits resulting from sale of the bungalow in question to Nirwani Akhara, which was acquired in the carrying on of the money-lending business, was assessable to tax?"

2. The assessee, Messrs. Bishambhar Nath Niranjaan Lal, carried on money-lending business and, in the course of that business, had lent to one Brij Mohan Vyas certain Sums of money for construction of a bungalow. The bungalow was mortgaged to the assessee for Rs. 30,000/- as security for the loans advanced to Brij Mohan Vyas. Further loans were advanced after that mortgage and, on 25-2-1942, it was found that the total sum advanced to Brij Mohan Vyas amounted to Rs. 38,675/-. A sum of about Rs. 10,000/- was found due as interest on the amount advanced as loan. On that very date, i.e., 25-2-1942, Brij Mohan Vyas sold the bungalow to the assessee and the sale-deed purported to be only for Rs. 38,675/-, the capital sum advanced, and the claim for payment of interest was relinquished. The loan account of Brij Mohan Vyas was thus squared up. Soon after the purchase of the bungalow, the assessee employed a broker to sell the bungalow. On 19-4-1942, the Nirwani Akhara of Allahabad entered into an agreement with the assessee for purchase of the bungalow and paid the earnest money. On 4-5-1942, the sale-deed in respect of this bungalow was executed in favour of Nirwani Akhara for Rs. 55,000/-. The assessee paid Rs. 1,109/- as brokerage and sale expenses to the broker engaged by him. After deducting the capital amount of Rs. 38,675/- and the brokerage etc. amounting to Rs. 1,109/-, the Income-tax Officer treated the balance of Rs. 15,216/- as profits and added it to the return made by the assessee thus making the total taxable income amount to Rs. 18,333/-. The assessee's contention was that this sum of Rs. 15,216/- was not income made by him in the course of business but was in the nature of a windfall and was thus not taxable. He went up in appeal before the Appellate Assistant Commissioner of Income-tax who, after reducing the taxable profits by about Rs. 2,000/-, maintained the order of the Income-tax Officer in other respects. In appeal, the Income-tax Appellate Tribunal set out, in some detail, the contentions

of the assessee and the Income-tax Department and, after referring to four cases, held that the last case of -- 'Beharilal v. Commr. of Income-tax, C. P. and U. P.', AIR 1941 All 135 (A), referred to by them, was on all fours with the present case. They were, therefore, inclined to accept the contention of the Department that "the profits ultimately resulting from the sale of the bungalow to the Akhara were made as a result of a scheme of profit making.

arising out of the money-lending business and as such were assessable to tax."

3. None of the cases referred to in para. 5 of the appellate order of the Tribunal has much relevancy to the question for decision before us and it would have been much more satisfactory if the Income-tax Appellate Tribunal had set out in detail the findings of fact on which their conclusion was based. By reason of this defect in the appellate order and by reason of further defect in the statement of the case, in which again the findings of fact were not clearly stated, learned counsel for the assessee argued, at some length, that there were no materials on the record on which the conclusion could be based and pressed for further statement of the case. We do not, however, feel disposed to accept this request as, in spite of the defective nature of the appellate order of the Tribunal, the following facts clearly emerge therefrom:

- (1) That the assessee used to carry on money-lending business and, in the course of that business, had lent money to Brij Mohan Vyas.
- (2) That the bungalow, which was under construction and for which Brij Mohan Vyas had borrowed money, was given in security.
- (3) That the amount of loan went on mounting up and reached the figure of Rs. 38,675/- which, according to the assessee himself, was more than the price of the bungalow and, on this sum of Rs. 38,675/-, a further sum of Rs. 10,000/- had accumulated as interest.
- (4) That Brij Mohan Vyas transferred the bungalow in satisfaction of his total liability.
- (5) That the assessee immediately on acquisition of the property attempted to sell it to the best advantage, and engaged a broker for that purpose; and (6) that it was not the contention of the assessee that he had purchased the bungalow by way of an investment of his capital.

From these facts and from the further fact that no explanation whatsoever was given why, if the assessee had intended to invest his money in the bungalow, it was necessary for him to sell it off so soon after the purchase, the income-tax authorities were justified in coming to the conclusion that the bungalow was acquired in the course of the money-lending business with the object of its being transferred at the best price available in the market so that the assessee might not lose on the loan transaction entered into with Brij Mohan Vyas and that, for the short period that he kept it, it was held by him as his stock-in-trade.

4. We are, therefore, of the opinion that the answer to the question referred to us for decision must be in the affirmative. The assessee must pay costs to the Department which we assess at Rs. 300/-.