

A. Grezo vs Commissioner Of Income-Tax. on 13 April, 1954

Equivalent citations: [1954]26ITR169(ALL)

JUDGMENT

MALIK, C.J. - This is a reference under Section 66(2) of the Indian Income-tax Act.

The assessee is a Greek national who has been in India for a period of 45 years. He was an employee and representative at Kanpur of Messrs. Patel Cotton company Limited, Bombay. He was drawing a salary as also a commission. The salary and the commission were kept in deposit with his employers in Bombay. The amount had accumulated to a large sum and on 17th April, 1939, he sent a telegram to his employers to purchase nine bars of gold on his account and keep the same in the safe custody of the Lloyds Bank, Bombay. This gold was purchased for Rs. 2,21,250 and was deposited with the bank. In 1942 the Lloyds Bank of Bombay was no longer willing to keep the gold in its safe custody as the war situation had worsened and the assessee got the gold transferred to Kanpur and kept it with the Chartered Bank of India there. On 13th October, 1944, the gold was sold for Rs. 3,98,302. Thus there was a difference of Rs. 1,77,052 in favour of the assessee.

The Income-tax Officer claimed that this sum of Rs. 1,77,052 was income from business and was assessable as such to income-tax. The case of the assessee, on the other hand, was that he held converted his capital into gold and this was merely the augmentation of that capital and could not be treated as business income. The Income-tax Officer as also the Appellate Assistant Commissioner of Income-tax decided the case against the assessee. On appeal, the Income-tax Appellate Tribunal agreed with the decision of the Appellate Assistant Commissioner of Income-tax. The assessee then applied under Section 66(1) of the Indian Income-tax Act but the Income-tax Appellate Tribunal refused to state a case on the ground that no question of law arose. On a reference to this Court under Section 66(2) of the Act, we directed that a case be stated and the Income-tax Appellate Tribunal has now formulated the following two questions for our decision :-

"(1) Whether, on the facts and in the circumstances of this case, there was any material to hold that surplus arising out of the sale of gold was not a capital gain and was taxable under the Indian Income-tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the transaction was not of a casual and non-recurring nature and the sum of Rs. 1,77,052, being a receipt arising from business or vocation of the assessee, was not exempt from taxation under Section 4(3)(vii) of the Indian Income-tax Act ?"

As regards the first question, as it has been pointed out by this Court in *Lalit Ram Mangilal of Cawnpore v. Commissioner of Income-tax, U. P., Lucknow*, the decision of the Income-tax Appellate Tribunal as to the nature of the income i.e., whether it is income from business or is capita gain, is more often than not a question of fact and has to be decided on the evidence and if the facts and circumstances of the case can reasonably indicate that if was income from business, it is not open to

this Court to sit in appeal to give a decision of its own on a different view of the facts and circumstances. If, however, the facts and circumstances relied upon by the Income-tax Appellate Tribunal cannot reasonably lead to the conclusion arrived at by the Tribunal, then a question of law arises whether, on the facts and circumstances of the case, it was possible for the Tribunal to come to the conclusion that it was business income.

The assessee was examined and he gave his statement and the reason why he had purchased those nine bars of gold. His statement, in brief, was that the situation in Italy and Greece was such in April, 1939, that it was clear to everybody that war was imminent. Sri Pathak wanted to refer us to a news item in the Pioneer of the 16th of April, 1939, was not before the Tribunal and we do not think we would be justified in admitting it as additional evidence. We must, therefore, confine ourselves to such facts and circumstances as appear from the record or of which we can take judicial notice. The assessee had filed a detailed list before the Tribunal giving the various incidents that had happened in March and April, 1939, which gave rise to a feeling of apprehension that outbreak of war was imminent. From this list it appears that in March, 1939, Germany had invaded Czechoslovakia and had annexed it. There was partial mobilisation by France, Rumania and Hungary. In April, 1939, Albania had been invaded by Italy. We need not go into further details but there can be no doubt that, in April, 1939, there was considerable nervousness among the people of the world that a second world war was imminent. The Appellate Assistant Commissioner of Income-tax has found that the amount to the credit of the assessee with Messrs. Patel Cotton company Limited, Bombay, in April, 1939, was Rs. 2,23,209-8-9. The assessee, therefore, practically utilised the whole of this amount in purchasing the nine bars of gold. By this purchase the whole of his capital became sterilised and had ceased to give him any income whatsoever. From the commercial chart showing closing prices of gold during the years 1939 to 1946, we find that gold prices were steady up to the end of 1941, except that there was slight rise from August, 1939. Gold, however, began to shoot up in price from January, 1942, and had reached its peak in May, 1943, when the price was as high as Rs. 97 per tola. The assessee had purchased the gold at the rate of Rs. 37-0-6 per tola. The circumstance that, even when the price of gold had more than doubled itself and was almost three times the original purchase value, the assessee did not part with any portion of it is a circumstance in his favour to which the Income-tax Appellate Tribunal has attached no significance. From May, 1943, the price of gold started falling except for occasional rises and in October, 1944, when the gold bars were sold, the price was Rs. 66-9-0 per tola which was a very low price, considering prices ranging before and after that month. It does not, therefore, appear that the assessee was trying to make a profit by selling gold at a favourable rate, having bought it at Rs. 37-0-6 per tola before the war.

There is another circumstance to which the Tribunal has attached no importance and that is that the assessee kept gold for a period of five and a half years and it was not till the war situation had altered that he sold it. Another circumstance, which might well have been considered, was that the whole of the capital was changed into gold and the gold was again sold in one lot in October, 1944. A person buying gold with the prices reached their peak at Rs. 97 per tola even if he had hoped that the prices might go up higher. On the other hand, a person, who, due to nervousness, had converted all his money into gold for the safety of his capital, would not like to part with it so long as the war situation did not change.

We went through the judgment of the Income-tax Appellate Tribunal very carefully to find out whether there were any facts and circumstances on which the Tribunal could rely for its finding that the gold was purchased with the object of making a profit and it was a business transaction and not the conversion of capital into a convenient form. The only grounds given by the Tribunal are that the assessee had before 1939 indulged in certain "futures" transactions. The "futures" transactions admitted by the assessee and mentioned in the order of the Appellate Assistant Commissioner of Income-tax and the Tribunal are certain speculations in cotton futures in 1928-29, 1929-30 and 1930-31 which always ended in loss to the assessee. He again indulged in some speculation in cotton in 1941-42 and he was definite that he did not enter into any transactions in cotton futures in the year ending 31st March, 1946, though he said that between 1939 and 1946 it may be that he had indulged in some speculation but he could not remember the dates or the quantities and could not furnish the details. He also admitted that in 1937 he had bought some gold futures. We do not know whether these ended in a profit or loss to the assessee. However, the mere fact that the assessee had, on certain occasions, indulged in some transactions in futures would be no evidence that this transaction of purchase of nine bars of gold was a business venture and not conversion of his capital.

The only other circumstance mentioned in the order of the Income-tax Appellate Tribunal is that the assessee went to Europe a month after he had purchased gold bars but he did not carry the gold with him. India was, at that time, much safer than Europe and it was not at all likely that any reasonable person would consider it safe to remove all his capital in the shape of gold bars from a Chartered Bank at Kanpur, where it was lying quite safe, to Greece or to London, particularly, when he had clear intention of returning to India and had gone to Europe only on six months leave. The facts and circumstances relied upon by the Income-tax Appellate Tribunal, therefore, cannot be said to furnish any proof that the purchase of nine bars of gold by the assessee was a transaction in the nature of a business venture and the difference in price fetched by the sale of those gold bars was profit in the course of business.

Our answer to the first question, therefore, is that there was no material to justify the finding that the surplus arising out of the sale of gold bars was income from business and not capital gain.

In view of our answer to the first question, the second question does not arise and need not be considered.

The assessee is entitled to his costs which we assess at Rs. 500.

Reference answered accordingly.