Lalit Ram Mangilal vs Commissioner Of Income-Tax on 13 January, 1950

Equivalent citations: AIR1950ALL390, [1950]18ITR286(ALL)

JUDGMENT

Malik, C.J.

1. The Income-tax Appellate Tribunal has referred the following two questions for opinion :

> (1) Whether in the circumstances of the case the profits from the sale of three gold bars said on 27th April 1943, arose from an 'adventure in the nature of the trade' within the meaning of S. 2(4), Income-tax Act, and was liable to income-tax ?
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> (2) Whether the profits arising from the transaction of the sale of gold bars made on 27th April 1943, could be taxed before the entire profits from the sale of the gold bars were determinable ?"

2. The assessee Messrs. Lalitram Mangi Lal, Proprietor Budhoo Lal of Kanpur, status, individual carries on business in cloth in Kanpur. In the account year ending June 1943, assessment year 1944-45, he had on 29th October 1942, purchased one gold bar at Rs. 61-8-0 per tola, two gold bars on 30th October 1912, at Rs. 61-11-0 per tola and five gold bars on 6th November 1942. at Rs. 61-9-0 per tola. Three bars, out of those purchased, were sold by the assessee on 27th April 1943 at Rs. 89-8-0 per tola. In July 1943. the eldest daughter of the assessee was married and he utilised two bars in getting ornaments made for the marriage, The remaining three bars the assessee sold on 22nd October 1944 at Rs. 66-14-0 per tola. The total price of the eight bars came to Rs. 1,24,454-9-0, out of which three bars were sold on 22nd April 1913, for Rs. 67,125 and three bars on 20th October 1944, for Rs. 50,090-15-3. I have already said that two bars were utilised by him in his daughter's marriage on 3rd July 1943.

3. The Income-tax Officer was of the opinion that these gold bars were purchased with the sole object of being sold at a profit and this was a venture in the nature of trade. He has held that the assessee had sold for Rs. 67,125 one bar that he had purchased on 29th October 1942, and the two bars on 30th October 1942, the total purchase price of the three bars being Rs. 46,218-12-0. He deducted certain expenses that the assessee had incurred and held that the assessee had made a total profit of Rs. 20,888 and that was assessable.

4. There was an appeal. The case came up before Appellate Tribunal, Allahabad Bench and the Tribunal was of the opinion that the sum of Rs. 20,888 was the income which was liable to be taxed. The assessee thereupon made an application under Section 66 (1), Income-tax Act, for a statement

of the case. The Tribunal granted the application and formulated the question set out above.

5. Taking up the second question first learned counsel for the appellant has relied on a decision of the Bombay High Court In re K.H. Mody, (1940) I. T. R. 179 (Bom.). In that case a plot of land had been purchased by the assesses in a village at a distance of 31/2 miles from Ahmedabad. An area of 266 acres had been ear marked for development and had been divided into one thousand plots. Only some of the plots were sold during the year previous to the year of assessment and the question arose, firstly, whether it was a venture in the nature of trade and, secondly, whether the income derived from the sale of some of the plots could be deemed to be income, profit or gain made during the account year. Answering the second question, Beaumont C. J. observed as follows :

> "It Is to be noted that the whole transaction is not yet complete, which distinguishes this case from the various other cases which have been cited in which there has been a purchase of property or goods and a subsequent sale and the Courts held that the transaction amounted to carrying on business. But we were not referred to any case in which only a part of the property bad been sold whilst the rest remained in the hands of the assessee and might result in a profit or might result in a loss. Moreover, we have no materials on which we can say that the basis on which the Assistant Commissioner arrived at this figure is a correct basis."

Kania J. observed as follows :

> "The first part of the question is whether there is profit in the business of purchasing and selling this land and if so Rs. 47,533 is the amount as mentioned by the Assistant Commissioner. We are not prepared to answer it. The reason is, that proceeding on the footing that this is an adventure in the nature of trade, the profits can be ascertained normally when the adventure comes to an end."

It is on the basis of the observations in this case and in the case of Commissioner of Income-tax, Burma v. A.K.A.R. Chettiar Family, 1941 9 I. T R. 347 : (A. I. R. (28) 1941 Rang. 263 S. B.), that it is argued that as the remaining three bars were not sold till 22nd October 1944, that is, after 30th June 1943, the end of the account year in question, the venture had not been completed as all the gold bars had not been sold and the profits arising from the sale of only three bars on 27th April 1943, could not be deemed to be taxable income.

6. In the Rangoon case the assessee, a Hindu undivided family, took over a piece of land in settlement of a debt due to it. The land was divided into plots and the plots were sold from time to time as buyers were available. The transaction resulted in a loss of Rs. 5,187-8-0. The income-tax authorities claimed that in each year in which a sale of a part of the property took place the assessee ought to have made an estimate of his loss on that particular sale and ought to have claimed the loss estimated to have been incurred in the accounting year in which it took place. It was held by the Bench of the Rangoon High Court that until the transaction bad completed, it could not be known what the loss would be and therefore the assessee was entitled to claim the sum of Rs. 5,137-8-0 as a loss suffered in the accounting year when the last sale took place. The Bench went on to observe that

"when only a part of the property has been sold while the rest remains in the hands of the assessee, and might result in a profit or might result in a loss, the whole transaction is not yet complete, no assessment can be made."

Relying on these authorities, Mr. Pathak has urged that whenever goods are purchased in bulk, so long as the whole lot has not been sold, profits cannot be ascertained, and the income does not become taxable. I do not consider that this general statement of the law can be correct. All retail dealers purchase stock in large quantities and they continue to sell them over a period of several years and, if the learned counsel's contention is correct, then separate account will have to be kept of each such purchase in bulk and, so long as the entire stock so purchased has not been disposed of, no tax can be imposed. There might be further difficulty that a part of the stock might not be sold for years and in that case the ascertainment of profits and the assessment of the income would have to be postponed for an indefinite period. The two cases cited above were very special cases where plots of land had been purchased as one unit and money had been spent on developing them, organizing their sale and in dividing them into various plots and it was not possible to ascertain whether there had been profit or loss so long as all the plots had not been sold. It was in those special circumstances that it was held that so long as all the plots were not sold the profits could not be ascertained and it could not be said that the assessee had made a profit or had suffered a loss.

7. Learned counsel has submitted that the purchase of the eight gold bars must be deemed to be one transaction and, so long as the last bar left in the hands of the assessee was not sold, it could not be correctly estimated what was the total loss or gain on the transaction. The point was raised before the Tribunal and it came to the conclusion that the purchase of the gold bars could not be treated as one transaction, even though the purchases were made on contiguous dates-one gold bar having been purchased on 29th October 1942, two on 30th October 1942, and five on 6th November 1942. The mere fact, however, that they were purchased on contiguous dates, according to the Tribunal, did not give them the character of a single transaction. On that finding of the Tribunal, question No. 2 referred to us for answer, does not arise.

8. Coming to the next point, while Mr. Pathak has urged that there is no clear finding and that, even if there be a finding that the bars were purchased for purposes of making a profit, the conclusion, being based on an inference from facts, was not binding on us. It has been strenuously urged by learned counsel for the department that the Tribunal has found as a fact that the adventure was undertaken with a view to make profits and it was not open to us to review this finding of fact and the question must, therefore, be answered in favour of the department.

9. The point has been dealt with at some length by my brother, Seth, and it is not, therefore, necessary for me to go into it in detail, but as the question is of some importance. I would like to briefly indicate my views. Certain facts are proved by direct or circumstantial evidence and these findings must be called the primary findings of facts. It is not disputed that such findings cannot be reopened before this Court so long as there is evidence on which such findings are based. After the primary facts have been found the question arises of inferences from them. Any legal effect from such findings must necessarily be a question of law. Where it is an inference of fact if the inference could not be derived from the proved facts, even in that case it is possible to hold that this Court can

go into the question on the same ground on which this Court does not consider itself bound by findings of fact which are not based on any evidence. Where the inference drawn is not a pure inference of fact but is a mixed inference, partly of fact and partly of law, so far as the inference is an inference of law this Court cannot be bound, but a pure inference of fact from primary facts proved, if it is not possible to hold that such inferences cannot follow from such findings cannot be reopened before us. The question, therefore, narrows down to this, whether the Tribunal had any material on which it could come to the conclusion that the purchase of gold bars was in the nature of a trade with a dominant object of making profit. From the findings arrived at by the Tribunal it could not be deduced that the gold bars were purchased with the dominant object of making profit and the answer to this question, therefore, must be in the negative.

Seth J.

10. This is a reference under Section 66 (1), Income-tax Act, made by the Allahabad Bench of the Income-tax Appellate Tribunal on an application to it by the assessee, Masers. Lalitram Mangilal of Kanpur. The assessee is an individual for it is Shri Budhu Lal who carries on business under this firm name. In the assessment order the assessee is described as Messrs. Lalit Ram Mangi Lal, Proprietor Budhulal, Chakla Mohal, Kanpur, individual.

11. The assesses carries on business in cloth. In the previous year, ending the June 1943, relevant to the assessment year 1944-45, the assessee purchased eight bars of gold between 29th October 1942 and 6th November 1942. One bar was purchased at the rate of Rs. 61-8-0 per tola on 29th October 1942, two were purchased on 30th October 1942 at Rs. 61-11-0 per tola, and the remaining five on 6th November 1942, at Rs.61.9-0 per tola. Out of the eight bars so purchased, three were sold by the assessee on 27th April 1943 at Rs. 89-8-0 per tola and the remaining bars remained in his hand at the close of the relevant previous year. Out of them two were utilised by the assessee in getting ornaments made for the marriage of his daughter in July 1943, and the remaining three were sold by him on 22nd October 1944, at the rate of Rs. 66-14-0 per tola.

12. In the course of the assessment for the year 1944-45, the Income-tax Officer took the view, that these transactions in gold made by the assessee were an adventure in the nature of a trade and, finding that the assessee had made a profit of Rs. 20,888 by the sale of three gold bars in April 1943, treated that amount to be assessable income of the assessee. Accordingly, he added the amount to the other income of the assessee and imposed tax upon it. It was contended on behalf of the assessee that the gold bars were not purchased with a view to make profit by selling them, but that they were purchased with two objects in view, namely, (1) to provide himself with a portable medium with which he could run away from Kanpur if it became so necessary on account of the insecurity caused by the political disturbances which took place in August 1942, and (2) for use in the marriage of the assessee's daughter which was likely to take place in the near future. The Income-tax Officer did not accept this contention and held that the purchase was made with the object of making profit by selling it.

13. This view of the Income-tax Officer was upheld in appeal by the Appellate Assistant Commissioner of Income-tax and again, on further appeal, by the Appellate Tribunal. It was also

contended before the Appellate Tribunal, that even if the transaction was to be held to be an adventure in the nature of a trade, the entire gold purchased, not having been disposed of before the end of the relevant previous year, the transaction was not complete, and, therefore, it could not be held that any profits had accrued in respect of the transaction during the relevant previous year. This contention too was repelled by the Tribunal, on a finding that the purchase of all the eight bars did not constitute one transaction and that, therefore, profits in the case were rightly determined on ordinary commercial principles of accountancy.

14. On these facts, the following two questions have been referred for our opinion:

> "(i) Whether in the circumstances of the case, the profits from the sale of the three gold bars sold on 27th April 1943 arose from an 'adventure in the nature of the trade' within the meaning of Section. 2 (4), Income-tax Act and was liable to income-tax ?
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> (ii) Whether the profits arising from the transaction of the sale of gold bars made on 27th April 1943 could be taxed before the entire profits from the sale of all the bars were determinable ?"

So far as the first question is concerned, I agree with the view of the Tribunal, that trade is an activity for the purpose of profit and that, therefore, an adventure to be of the nature of a trade should have a profit motive behind it. I further agree with the view of the, Tribunal, that if the action of the assessee be capable of more than one interpretation, the one in his favour should be preferred. Put in other words, this means, that the burden lies upon the Department to prove that the adventure was undertaken from a motive of making profit and not from any other motive.

15. It has been strenuously urged before us by the learned counsel for the Department, that in this case the Tribunal has found as a fact that the adventure in gold transactions was undertaken with a view to make profits and that it is not open to us to review this finding of fact and on this finding of fact the question should be answered in favour of the Department. On the other hand, it has been contended by the learned counsel for the assessee that it is primary findings of facts alone that are binding upon us but that the conclusion to be drawn from the primary findings is a question of law, to be considered by this Court. The learned counsel for the assessee contends that every inference of fact from proved facts raises a question of law, The learned counsel makes distinction between two kinds of facts, namely, those which can be established from direct evidence and those that are deduced by an inference from facts established by direct evidence, and contends that the determination of the facts belonging to the second class always involves a question of law,

16. As I do not agree with the contention of the learned counsel for the Department that the Tribunal has recorded any definite finding to the effect that the transactions in gold were entered into with the sole or dominant object of making profit, and as the answer to the first question depends upon the legal effect of the proved facts in the case, I find it unnecessary to express any opinion on the extreme contention put forward by the learned counsel for the assesses that an inference of fact from proved facts always raises a question of law. The proposition, that the legal inference to be drawn from proved facts involves a question of law, is established beyond doubt; vide Dhanna Hal v.

Moti Sagar, 54 I. A. 178 : (A. I. R. (14) 1927 P. C. 102), where it has bean held :

> "Now, their Lordships would be the last to seek to abridge the effect of Sections 100 and 101, Civil P. C. or weaken the strict rule that on second appeal the appellate Court is bound by the findings of fact of the Court below. They are well aware, moreover, that questions of law and of fact are often difficult to disentangle. It is clear, however, that the proper effect of a proved fact is a question of law and the question whether a tenancy is permanent or precarious seems to them in a case like the present to be a legal inference from facts and not itself a question of tact."

The following observations in Nafar Chandra v. Shukur Sheikh, 45 I. A. 183 : (A. I. R. (5) 1918 P. C. 92) also support the same view:

> "Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law ....."

I concur in the opinion of Lord President Normand, expressed in the Commissioner of Inland Revenue v. Frazer, (1942) 24 Tax Cas. 498, that the appeal Court has jurisdiction to intervene if it appears either that the tribunal has misunderstood the statutory language or that the tribunal has made a finding for which there is no evidence or which is inconsistent with the evidence or contradictory of it.

17. The tribunal itself has not treated this matter as a pure question of fact but as a matter depending on the legal inference arising from certain facts proved in the case. If the tribunal had treated this question as a question of fact, it would not have referred the first question for our opinion. The question for consideration, therefore, is whether the facts considered by the appellate tribunal satisfactorily establish that the assessee embarked upon this adventure in gold with a view to make profit and, therefore this adventure was an adventure in, the nature of a trade.

18. The following facts have been considered by the appellate tribunal in this connection: (1) During the period in question, that is, in 1942 43, U. P. was one of the few provinces least in danger from Japanese raids and no withdrawal of capital from cloth business was necessary. (2) Political disturbances in the country were more in small towns than large. (3) The period was such when large profits were being made in the cloth trade. (4) Bifurcation of business was a popular remedy practised to evade the rigours of the levy of the Excess Profits Tax. (5) The purchase was not made for the marriage provision of the daughters because the first sale of gold appeared to be effected three months before the older daughter's marriage and within about six months of the date of the purchase of the gold. (6) The size of the purchase was so large that it was quite out of proportion to the financial status of the applicant as determinable from his capital accounts in the business. The first two findings, that the United Provinces was least in danger from Japanese raids, and that the political disturbances were more in small towns than large, imply a finding, that the United Provinces was also in danger from Japanese raids though the danger was not very great, and that there were political disturbances in large towns also though disturbances in email towns were more. These findings are, therefore, not inconsistent with the case of the assessee, that in making the

purchase of gold the assessee was influenced by the special conditions of life prevailing in the year 1942-48, and was actuated by a desire of converting a part of his capital into a portable commodity with which he could run away from Kanpur in case of necessity.

19. As regards the third finding, that large profits were being made in the cloth trade at the material time, it has to be observed, that there is no finding whatsoever that the cloth business of the assessee was in any way adversely affected by the withdrawal of the capital invested in the purchase of the gold. So that this finding does not in any way affect the case set up by the assessee and is no evidence of the fact, that the purchase of gold was made with the object of making profits.

20. I shall consider the fourth finding a little later, but coming to the fifth finding, that the purchase was not made for the marriage provision of the daughters, it has to be observed that this finding assumes that the purchase was made with the sole object of making provision for the marriages of the daughters. The tribunal was not justified in making such assumption when it was the specific case of the assessee that his object in making the purchase, was if not primarily at least as much to provide himself with a portable material as to provide for his daughters' marriages. It also ignores that two of the gold bars were actually utilised in making ornaments for the marriage and three gold bars were sold a short time before the marriage and that it is possible that the sale was made to obtain cash for the expenses of the marriage.

21. I fail to discover how the sixth finding, namely, that the size of the purchase was so large that it was quite out of proportion to the financial status of the assessee, leads to the conclusion that the gold was purchased with the object of making profit. It seems to be consistent only with the case of the assesses, that he withdrew the capital in order to convert it into a portable medium.

22. The fourth finding, that the bifurcation of business provided a remedy for the evasion of Excess Profit Tax also does not lead to any necessary inference in favour of the Department. It is based upon the assumption that the purchase was made not with the object alleged by the assessee bat with the object attributed to him by the Department. The inference drawn from it, therefore, suffers from the fallacy that the argument assumes that which it aims at proving.

23. For the foregoing reasons, I am of the opinion that the aforesaid six findings, taken into consideration by the Appellate Tribunal, do not necessarily lead to the conclusion that the purchase of gold was made with the sole or dominant motive of making profits and that these findings are as much, if not more, consistent with the case of the assessee as they are with the case of the Department and that upon these findings it is not possible to hold affirmatively that the dealings in gold were by way of adventure in the nature of a trade. I am, therefore, of the opinion that there was not sufficient legal evidence on the record upon which it could be held that the profits from the sale of gold bars arose from an adventure in the nature of a trade. My answer to the first question, therefore, is :

> "In the circumstances of the case, the profits from the sale of the three gold bars on 27th April 1943 have not been proved to have arisen from an adventure in the nature of a trade within the meaning of Section 2 (4), Income-tax Act and that they are,

therefore, not liable to income-tax."

In view of the answer to the first question the second question does not call for any answer, but, as it has been referred to us, I propose to deal very briefly with it.

24. The contention of the learned counsel for the assessee is, that where certain goods are purchased, unless the whole of the stock so purchased has been disposed of, it is not possible to ascertain whether the transaction has resulted in profit or loss and, therefore, any profits resulting from the sale of a portion of the stock cannot be assessed to tax. Learned counsel has relied on two cases in support of this contention.

25. In the first case In re K.H. Mody, (1940) 8 I. T. R. 179 (Bom.) decided by the Bom-bay High Court, a plot of land was purchased by the assessee in a village on the outskirts of the city of Ahmedabad and at a distance of 31/2 miles from it. The assessee thereafter earmarked an area of 266 acres for development and divided it into one thousand plots. Only some of the plots were sold during the previous year relevant to the year of assessment, and in these circumstances two questions arose for decision, (1) Whether it was a venture in the nature of trade, and (2) whether the income derived from the sale of some of the plots could be deemed to be income, profit or gain made during the account year. Answering the second question, Beaumont C. J. said :

> "It is to be noted that the whole transaction is not yet complete, which distinguishes this case from the various other cases which have been cited is which there has been a purchase of property or goods and a subsequent sale and the Courts held that the transaction amounted to carrying on business. But we were not referred to any case in which only a part of the property had been sold whilst the rest remained in the hands of the assessee and might result in a profit or might result in a loss. Moreover, we have no materials on which we can say that the basis on which the Assistant Commissioner arrived at this figure is a correct basis." while Kania J. observed :
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> "The first part of the question is whether there is profit in the business of purchasing and selling this land and if so Rs. 47,533 is the amount as mentioned by the Assistant Commissioner. We are not prepared to answer it. The reason is, that proceeding on the footing that this is an adventure in the nature of trade, the profits can be ascertained normally when the adventure comes to an end."

26. In the other case also relied upon by the learned counsel for the assessee, Commissioner of Income tax, Burma v. A.K.A.E. Chettiar Family, 1941-9 I. T. R. 347 : (A. I. R. (28) 1941 Rang. 263 S. B.), a piece of land was taken by the assessee, in settlement of a debt due to it, and was divided into various plots which were sold from time to time to different buyers, and these transactions resulted in a loss of Rs. 5,137-8-0. The income-tax authorities claimed that in each year in which a sale of a part of the property took place the assessee ought to have made an estimate of his loss on that particular sale and ought to have claimed the loss estimated to have been incurred in the accounting year in which it took place. It was observed that "when only a part of the property has been sold, while the rest remains in the hands of the assessee, and might result in a profit or might result in a

loss the whole transaction is not yet complete, no assessment can be made."

The Bench, therefore, finding that the loss could not be known until the transaction had been completed, held that the assessee was entitled to claim a sum of Rs. 6,137-8-0 as the loss suffered in the accounting year when the last sale took place.

27. It is to be obeserved that in both these cases the laud was purchased as one unit and the profit or loss from the sale of that unit could not be ascertained unless the whole of it had been disposed of. The transaction was not one of purchase of a commercial commodity like gold or silver, in which the commodity is purchased at a certain rate and the price of which does not depend on the quantity purchased and where the different parts of the commodity purchased do not command different prices at any particular time. It is obvious from the observations quoted above that in both these cases the transaction was treated as one transaction which was not complete when a portion only of the land purchased bad been sold. It is further to be noted that Kania J. only says that the profits can be ascertained normally when the adventure comes to an end, which presupposes that cases may exist where profits may be ascertained even before the entire property purchased had been disposed of. In my opinion these two cases do not lay down any rule of general application, applicable to all cases irrespective of the commodity dealt with and irrespective of the manner in which the assessee deals with the commodity purchased. I am further of the opinion, that they do not apply to the present case.

28. So far as this case is concerned, there is a distinct finding of fact recorded by the tribunal that the purchase of the eight gold bars did not constitute only one transaction. It cannot be said in the present case that the eight gold bars constituted only one unit and therefore, the profits could not be ascertained until the whole of that unit had been disposed of. It appears that the assessee had kept an account of these gold bars in his account books in the same manner in which he was keeping an account of the stock of cloth in which he was trading, for the Income-tax Officer observes:

> "I am not taking profit on three bars of gold left unsold at the end o£ the year as the assesee's method of valuing stock being cost or market whichever is lower, there would be no profit if the closing stock were valued at cost price."

My answer to the second question, therefore is that:

> "If the profits arising from the sale of gold bars made on 27th April 1943 were profits which had arisen from an adventure in the nature of a trade, they could be taxed before the entire profits from the sale of all the gold bars became determinable."

I would, therefore, answer the two questions as follows : Answer to the first question :

> "In the circumstances of the case, the profits from the sale of the three gold bars sold on 27th April 1943 have not been proved to have arisen from an adventure in the nature of a trade within the meaning of Section 2 (4), Income-tax Act, and they are, therefore, not liable to income-tax"

Answer to the second question :

> "If the profits arising from the sale of gold bars made on 27th April 1943 were profits which had arisen from an adventure in the nature of a trade, they could be taxed before the entire profits from the sale of all the gold bars became determinable."

I am further of opinion that the assessee should get his costs from the department and I would assess them at Rs. 500.