Chittoor Motor Transport Company ... vs Income Tax Officer, Chittoor on 6 October, 1965

Equivalent citations: AIR 1966 SUPREME COURT 570, 1966 (1) ITJ 91, 1966 (1) SCWR 308, 1966 59 ITR 238, 1966 (1) SCJ 127

Bench: K.N. Wanchoo, M. Hidayatullah, J.C. Shah

```
           CASE NO.:
Appeal (civil)  563 of 1964

PETITIONER:
Chittoor Motor Transport Company Private Limited

RESPONDENT:
Income Tax Officer, Chittoor

DATE OF JUDGMENT: 06/10/1965

BENCH:
P.B. GAJENDRAGADKAR(CJ) & K.N. WANCHOO & M. HIDAYATULLAH & J.C. SHAH & S.M.
SIKRI

JUDGMENT:
```

JUDGMENT 1966 AIR (SC) 570 The Judgment was delivered by SIKRI J.

SIKRI J.

This is an appeal by certificate of the High Court of Andhra Pradesh against its judgment dismissing a petition filed under article 226 of the Constitution by the appellant. The appellant is a private limited company, hereinafter referred to as "the company", and three persons hold shares of the company as under Shares Amount Rs Sri C. P. Sarathy Mudaliar 2, 797 27, 970 Sri C. P. Singaram 420 4, 200 Sri C. P. Doraiswamy 500 5, 000 The company was doing transport business and for the assessment year 1959-60 (previous year ending 31st March, 1959) it claimed a sum of Rs. 48, 600 as development rebate in respect of the four new buses purchased by it and brought to use during the year. The Income-tax Officer disallowed the amount but the Appellate Assistant Commissioner, on appeal, allowed the entire sum of Rs. 48, 600 as development rebate. On May 27, 1959, the three shareholders entered into a partnership and the capital of the firm was as follows Rs C. P. Sarathy Mudaliar 25, 000 C. P. Singaram 10, 000 C. P. Doraiswamy 10, 000 Total 45, 000 On June 30, 1959, the company passed a resolution transferring a number of motor buses, including the four in respect of which development rebate had been claimed, to the partnership firm for a sum of Rs. 2, 52, 000. The company was not wound up and is still in existence and carrying on business as a transport company. On February 7, 1962, the Income-tax Officer, purporting to Act under section 35(11) of the Income-tax Act, 1922, hereinafter referred to as the Act, issued a memorandum to the

appellant stating, inter alia, that "since the assets were transferred within 10 years I propose to invoke the provisions of section 35 of the Act and rectify the income by including the rebate allowed as income of the assessee."

He invited the assessee to give his objections, if any. The appellant thereupon filed a petition in the High Court on February 19, 1962, praying inter alia that the Income-tax Officer be prohibited from proceeding with the rectification of the income-tax assessment for 1959-60, as per the memorandum dated February 7, 1962. Two points were taken in the petition :

> First, that section 10(2)(vib) of the Income-tax Act was repugnant to article 14 of the Constitution; and, secondly, that assuming that section 10(2) (vib) was intra vires, this transaction did not amount to a sale or transferThe High Court held that section 10(2)(vib) was not repugnant to article 14 of the Constitution, and that the transaction amounted to transfer within section 10(2)(vib) The learned counsel for the appellant, Mr. Naunit Lal, has reiterated the same points before us. Section 10(2)(vib) and section 35(11) are in the following terms "10(2) Such profits or gains shall be computed after making the following allowances, namely :---
>
> (vib) in respect of a new ship acquired or new machinery or plant installed after the 31st day of March, 1954, which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of acquisition of the ship or of the installation of the machinery or plant, equivalent to, ---
>
> (ii) in the case of a ship acquired before the 1st day of January, 1958, and in the case of any machinery or plant, twenty-five per cent of the actual cost of the ship or machinery or plant to the assessee and if any such ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government at any time before the expiry of ten years from the end of the year in which it was acquired or installed, any allowance made under this clause shall be deemed to have been wrongly allowed for the purposes of this Act."
>
> " 35.(11) Where an allowance by way of development rebate has been made wholly or partly to an assessee in respect of a ship, machinery or plant in any year of assessment under clause (vib) of sub-section (2) of section 10, and subsequently at any time before the expiry of ten years from the end of the year in which the ship was acquired or the machinery or plant was installed---
>
> (i) the ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government ; orthe development rebate originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, proceed to re-compute the total income of the assessee for the relevant year as if the re-computation is a rectification of a mistake apparent from the record within the meaning of this section, and the

provisions of sub-

section (1) shall apply accordingly, the period of four years specified therein being reckoned from the end of the year in which the transfer takes place or the money is so utilised."

There is no doubt that on the true interpretation of section 10(2)(vib) it is clear that if an assessee sells to a person other than the Government at any time before the expiry of ten years from the end of the year in which the motor vehicle was acquired, the allowance is deemed to have been wrongly allowed for the purposes of the Act, but if the assessee sells it to the Government, no such consequence follows The learned Additional Solicitor-General says that the object was to help in the development of industry; indeed the rebate was called "development rebate"; and in order to achieve this object a condition was put that if the assessee did not utilise it in his own business, the rebate would be forfeited or deemed to have been allowed wrongly, i.e., not really for development purposes. He said that by a sale to the Government this object was not defeated because the legislature assumes that the Government will act in the public interest. In our opinion, there is no discrimination which is hit by article 14 of the Constitution in this case. The legislature has directed the giving of a rebate on conditions which are exactly the same for every assessee, one condition being that if the assessee sells before the expiry of ten years from the end of the year in which it was acquired, to a person other than the Government, he would forfeit such rebate. This condition is applicable to every assessee and an assessee has a choice of either selling to a person other than the Government and forfeiting the rebate or selling to the Government and keeping the rebate with himself. The discrimination, if any, arises on the choice made by the assessee. The legislature perhaps presumes that if the machinery is offered to the Government for sale, the Government will only buy it at a price which will take into consideration the rebate taken by the assessee. In our opinion, therefore, it has not been established that section 10(2)(vib) violates article 14 of the ConstitutionMr. Naunit Lal then urges that in this case there has been no sale or transfer within section 10(2)(vib). He says that the company consisted of the same three persons as the partnership firm. He further says that it is not a commercial transaction at all and what the latter part of section 10(2) (vib) contemplates is a commercial sale or transfer. In this connection he relies on Commissioner of Income-tax v. Sir Homi Mehta's Executors, Rogers & Co. v. Commissioner of Income-tax and Commissioner of Income-tax v. Mugneeram Bangur . In the first case the facts in brief were these. The assessee and his sons formed a private limited company and transferred to that company shares in several joint stock companies which the assessee had held jointly with his sons for Rs. 40, 97, 000 which was the market value of the shares at that time. It was found that these shares had cost to the assessee only Rs. 30, 45, 017 and the income-tax authorities levied income-tax on the difference between the market price and the cost price of the shares on the ground that the assessee had made a profit to that extent by this transaction. The High Court held that though the assessee and his sons on the one hand and the private limited company formed by them were distinct entities in law but in truth and substance the only result of this particular transaction was that Sir Homi Mehta and his sons held these very shares in a different way from the way they held before the transaction. It observed that " they adopted a different mode, the mode of the formation of the limited company with all its advantages, in order to hold these shares and to deal with these shares and to make profit out of these shares. It further held that Sir Homi Mehta did not deal with these shares in the ordinary course as a businessman when he transferred these shares to the private

limited company. In our opinion, this case has no relevance to the question of the interpretation of the words "sold or otherwise transferred"

> in the latter part of section 10(2)(vib)The second case, Rogers & Co. v. Commissioner of Income-tax , is on the same lines. The Calcutta High Court in Commissioner of Income-tax v. Mugneeram Bangur followed Doughty's case, but there too they were not concerned with the interpretation of the words "sold or otherwise transferred"

If we look at the resolution dated June 30, 1959, it is quite clear that it is a sale for consideration of a number of buses by the limited company to the partnership. It would be a sale under the Sale of Goods Act and it would be a sale in any other proper meaning which might be given to the word "sale". We are not concerned whether any profit resulted to the assessee but what we are concerned with is whether the assessee had sold or transferred these buses to the partnership. To us the answer seems to be plain that whether the transaction resulted in profit to the company or not, the transaction comes within the purview of the latter part of section 10(2)(vib) In the result the appeal fails and is dismissed with costs