

## **Smt. Indramani Bai And Anr. vs Commissioner Of Income-Tax (Addl.) on 18 February, 1993**

**Equivalent citations: [1993]200ITR594(SC), 1993(2)SCALE100, 1994SUPP(2)SCC114B, AIRONLINE 1993 SC 560**

**Bench: B.P. Jeevan Reddy, N. Venkatachala**

### **JUDGMENT**

1. Assesseees are the appellants. They are aggrieved by the judgment of the Andhra Pradesh High Court answering the question referred to it under Section 256(1) of the Income Tax Act, at the instance of the Revenue, against them. The two question referred read as follows:

- (1) Whether on the facts and circumstances of the case the profits of Rs. 41,6667-derived by the assessee was an adventure in the nature of trade;
- (2) If the answer to the above question is in affirmative, whether the assessment could be made in the status of an association of persons.

2. The assessee are the wives of two brothers, who are partners in a firm. In December 1963, the assesseees purchased a piece of land measuring 8,479 Sq. yards in the Banjara Hills Area of Hyderabad, for a consideration of Rs. 10,620/-. They say, they raised the purchase-money by selling their silver to the partnership firm, of which their respective husbands are partners. The firm deals in bullion. Shortly after purchasing the land, they carved it into four plots and sold them individually. Two agreements of sale were entered into, one in May and the other in July, 1964 and sale-deeds executed in pursuance thereof on 9.10.1964 and 13.11.1964. The total consideration received under the sale-deeds is Rs. 52,285/-. The Income Tax Officer brought the difference amount to tax treating the transaction as an adventure in the nature of trade. The assesseees questioned the same by way of an appeal before the Appellate Assistant Commissioner. It was dismissed. The matter was then carried in further appeal to the Tribunal. The Tribunal allowed the appeal holding that the intention of the assesseees while purchasing the said land was to make an investment and that they had no intention of re-selling the same. It observed that having regard to the background of the assesseees, the transaction cannot be held to be an adventure in the nature of trade. On Reference the High Court came to a contrary conclusion. According to the High Court, the fact that soon after the purchase of the land, the assesseees carved it into plots and sold them within a few months, coupled with the other facts and circumstances of the case, establishes that the intention of the assesseees, even when they purchased the land, was to re-sell the same - and not to make an investment. It is the said conclusion which is questioned before us.

3. On the facts found, we cannot say that the High Court was in error in coming to the conclusion it did. On the other hand, the Tribunal seems to have made certain assumptions while coming to the conclusion in favour of the assesseees, which were not really warranted. The Tribunal refers to the

'background of the ladies' as one of the circumstances including it to come to the conclusion in favour of the assessee but it has not taken care to elucidate what that background was. The fact that soon after the purchase, the assessee carved out the land into plots and sold them within a few months, coupled with other circumstances of the case, is consistent more with the theory of adventure in the nature of trade than with the other theory accepted by the Tribunal.

4. We are, therefore, unable to see any ground for interference in this appeal. It is accordingly dismissed. There will be no order as to costs.