

Supreme Court of India

Commissioner Of Income-Tax vs Attili N. Rao on 11 October, 2001

Equivalent citations: AIR 2002 SC 388, (2001) 171 CTR SC 188, 2001 252 ITR 880 SC, JT 2001 (10) SC 412, (2003) 9 SCC 658, 2001 119 TAXMAN 1030 SC

Bench: S Bharucha, Y Sabharwal, B Kumar

ORDER

1. The High Court ([1998] 233 ITR 10) answered against the Revenue all the following questions, except question No. 3 which, in the High Court's view, did not arise for consideration (page 11) :

"1. Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was correct in holding that the amount realised by the sale of the assessee's interest in the property was only Rs. 4,33,960 i.e., Rs. 5,62,980 minus Rs. 1,29,020 ?

2. Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was correct in holding that the amount realised under the charge or mortgage by the Government by public auction does not partake of the character of 'full value of consideration' envisaged under section 48 of the Income-tax Act ?

3. Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was justified in holding that the amount payable by the assessee in discharge of the mortgage debt to the Government on the sale of property was an expenditure incurred towards the cost of acquisition of the capital asset and deductible under section 48 of the Income-tax Act ?

4. Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was correct in holding that the assessee was not vested with full interest in the property sold and capital gains be computed only with reference to the price realised towards his interest with property ?"

2. The Revenue is in appeal by certificate.

3. The assessee has been served but has not chosen to put in an appearance.

4. The assessment year with which we are concerned is the assessment year 1982-83. The assessee carried on abkari business. In the course of the financial year 1970-71 he mortgaged to the Excise Department of the State of Andhra Pradesh immovable property belonging to him at Waltair. He did so to provide security for the amounts of "kits" which were due by him to the State. The State, in the assessment year with which we are concerned, sold the immovable property by public auction, without the intervention of the court, to realise its dues. A sum of Rs. 5,62,980 was realised at the auction. Thereout, the State deducted the amount of Rs. 1,29,020 due to it towards "kits" and interest and paid over the balance to the assessee.

5. The Revenue contended that the assessee was liable to capital gains tax on capital gain in the sum of Rs. 3,70,970, having regard to the cost at which the said immovable property had been acquired by the assessee. According to the assessee, the sum of Rs. 1,29,020 due by him to the State on

account of "kits" was required to be deducted from the amount of Rs. 5,57,980 realised at the auction before computing the capital gain. According to him, the capital gain was only Rs. 85,130. Neither the Income-tax Officer nor the appellate authority agreed with the assessee and the assessee went up in further appeal to the Income-tax Appellate Tribunal.

6. The Tribunal upheld the assessee's claim. According to it, the full sale price realised by the sale of the immovable property had two components; the first represented the price which could be ascribed to the interest of the assessee in the immovable property and the rest represented the arrears of debt and interest due to the State. In its opinion, as there was a clear charge or mortgage over the immovable property, the amount realised under the charge or mortgage was an amount which never reached the hands of the assessee but which reached the Government by overriding title.

7. From out of the judgment and order of the Tribunal, the questions aforesaid were placed before the High Court for its consideration. The High Court observed that the undisputed fact was that the immovable property was mortgaged to the State. Thereby, an interest in the property was created in favour of the State. When the immovable property was sold by public auction, its value had to be reduced to the extent of the interest that was created in favour of the State by reason of the mortgage.

8. We are of the view that the Tribunal and the High Court were in error. What was sold by the State at the auction was the immovable property that belonged to the assessee. The price that was realised therefore belonged to the assessee. From out of that price, the State deducted its dues towards "kits" and interest due from the assessee and paid over the balance to him. The capital gain that the assessee made was on the immovable property that belonged to him. Therefore, it is on the full price realised (less admitted deductions) that the capital gain and the tax thereon has to be computed.

9. In these premises, the first question is answered in the negative and in favour of the Revenue. The other questions do not arise for consideration.

10. The civil appeal is allowed. The judgment and order under appeal is set aside.

11. No order as to costs.