

Rajeshwar Parshad v. The Commissioner of Income-tax, Haryana
(G. C. Mital, J.)

Ram's case is, therefore, not correctly decided and is hereby overruled. In Nanak Singh's case, the first Appellate Court diverted the amount of fine, if paid, towards the payment of compensation. The imposition of fine, as a sentence, was set aside. In Nanak Singh's case, correct view of the provisions of section 5(1) of the Act has been taken.

(14) In the case in hand, there could not be any practical difficulty for the realisation of compensation as the fine which was already deposited by the petitioners under orders of the trial Court has been converted into compensation.

(15) With the above observations, we do not find any merit in this revision and dismiss it.

N. K. S.

Before S. P. Goyal and G. C. Mital, JJ.

RAJESHWAR PRASHAD,—Applicant.

versus

THE COMMISSIONER OF INCOME-TAX, HARYANA,—Respondent.

Income Tax Reference No. 92 of 1977.

July 10, 1985.

Income Tax Act (XLIII of 1961) as amended by Finance Act, 1972—Section 2(14)(ii)—Capital gain on selling jewellery—Amending Act brought into effect from 1st day of April of financial year—Such amendment—Whether applies to the assessment of that year or the subsequent year.

Held, that when the Income Tax Act, 1961 stands amended on the first day of April of any financial year, then the amendment must apply to the assessment of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force. Thus, when amendment making capital gain on the sale

of jewellery liable to tax comes into force on the first day of April of a financial year, then that amendment would apply to the assessment of that year. (Para 7).

Reference Under Section 256(1) of Income Tax Act, 1961 made by the Income Tax Appellate Tribunal Chandigarh Bench, Chandigarh for the opinion of this Hon'ble High Court on the following question of law arising out of the Tribunal order dated 20th October, 1976 passed in Income Tax Appeal No. 171 of 1975-76, & R.A. No. 171 of 1976-77 regarding the Assessment Year 1973-74.

"Whether, on the facts and in the circumstances of the case, and in view of the amendment of section 2(14) (ii) of the Income-tax Act, 1961 with effect from 1st April, 1973, the Tribunal was justified in law in holding that income from capital gains on sale of jewellery was taxable for the assessment year 1973-74 ?"

B. S. Gupta, Advocate, for the Petitioner.

Ashok Bhan Senior Advocate with Ajay Mittal, Advocate, for the Respondent.

JUDGMENT

G. C. Mital, J.—

(1) If an amendment in the Income-tax Act, 1961 (hereinafter referred to as 'the Act') is brought into effect from the 1st of April of a particular financial year, 'whether that amendment would apply to the assessment of that year' is the question of law which we are called upon to determine in this reference.

(2) During the year 1972-73 which ended on 31st March, 1973 L. Rajeshwar Pershad (hereinafter called 'the assessee') sold ornaments/jewellery for Rs. 66,500. According to the assessee, no capital gain accrued on the sale of jewellery. However, the Income-tax Officer did not agree with the stand of the assessee and since the amendment contained in section 2(14) (ii) of the Act came into effect on 1st April, 1973, it was held that in the assessment year 1973-74 because of the amended provision capital gains tax was leviable on the sale of jewellery. After allowing necessary deductions etc. the net capital gain was determined at Rs. 24,550.

(3) Feeling aggrieved from the aforesaid order, the matter was taken up in appeal before the Appellate Assistant Commissioner where also the assessee remained unsuccessful.

Rajeshwar Parshad v. The Commissioner of Income-tax, Haryana
(G. C. Mital, J.)

(4) Further appeal to the Tribunal also met with the same fate (copy Annexure 'D').

(5) In deciding the point of law the Tribunal placed reliance on the decision of the highest Court in *Karimtharuvi Tea Estate Ltd. vs. State of Kerala*, (1).

(6) On application under section 256(1) of the Act, the Tribunal has referred the following question for opinion to this Court:

“Whether, on the facts and in the circumstances of the case, and in view of the amendment of section 2(14) (ii) of the Income-tax Act, 1961 with effect from 1st April, 1973, the Tribunal was justified in law in holding that income from capital gains on sale of jewellery was taxable for the assessment year 1973-74?”

(7) After hearing the learned counsel for the parties and on reading of *Karim Thagwi Tea Estate vs. State of Kerala* (supra), we find that the decision of the Tribunal is correct and the question deserves to be answered in the affirmative, i.e., in favour of the Revenue. The highest Court has held as follows in the said case:—

“Now, it is well-settled that the Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.”

(8) In the present case the amendment came into force on the 1st of April, 1973 and therefore since the capital gain on the sale of jewellery/ornaments was made liable to tax the Tribunal was right in affirming the decision of the officers below in levying the tax.

(9) It was sought to be argued by Mr. Balwnat Singh Gupta that in certain amendments it is specifically provided as to which assessment years the same would be applicable and since it is not mentioned in the amendment in question that it would apply to assessment year 1973-74, the amendment would take effect only in the

subsequent year, i.e., 1974-75. Different phraseologies are employed while making amendments but whenever amendments are made with effect from the first day of April of any financial year, according to the dictum of the Supreme Court in the aforesaid case the amendment would apply to the assessments to be made for that year and that is what the Tribunal has held and we are in agreement with that.

(10) For the reasons recorded above, we answer the proposed question in the affirmative, i.e., in favour of the Revenue and against the assessee. The parties are left to bear their own costs.

N.K.S.

Before M. M. Punchhi, J.

PARO DEVI AND OTHERS,—Petitioners.

versus

SUKH DEVI,—Respondents.

Civil Revision No. 1747 of 1985.

August 7, 1985.

Code of Civil Procedure (V of 1908)—Order 39—Rules 1 and 2—East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(i)—Ejectment order passed against one heir of the deceased tenant—Other heirs of the deceased not impleaded as parties—Such order sought to be executed by the landlord—Suit by other heirs seeking to restrain the landlord from taking possession of the premises in execution of the ejectment order—Temporary injunction in such a suit—Whether should be granted—Prima facie case and balance of convenience—Whether in favour of the plaintiffs.

Held, that a statutory tenant also has an estate or interest in the premises which can be inherited and such a tenant has been placed on the same footing as a contractual tenant. In this view of the law and the widened definition of the word 'tenant' used in the East Punjab Urban Rent Restriction Act, 1949, it is not necessary that one of the statutory tenants who has inherited the estate be in actual possession of the premises in dispute. This by no means is a final statement of law, but is enough to create *prima facie* case in favour of the plaintiff. Indisputably, the plaintiff succeeded to the