

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, AMRITSAR,—*Applicant.*

versus

SHRI KANTI KUMAR SHARMA, AMRITSAR,—*Respondent.*

Income Tax Reference No. 178 of 1980 .

December 2, 1988.

Income Tax Act (XLII of 1961)—S. 52(2)—Application of—Income-Tax Officer concluding that selling price of land being kept low—Conclusion not based on material—Opportunity to collect fresh material—Validity—Burden of proof—Whether on revenue.

Held, that the provisions of Section 52(2) of the Income Tax Act, 1961 can be invoked only where the consideration for the transfer of a capital asset has been understated by the assessee, or in other words, the full value of the consideration in respect of the transfer is shown at a lesser figure than that actually received by the assessee, and the burden of proving such understatement or concealment is on the revenue. The understatement or not showing the full value of the consideration would be with a view to reduce the tax liability. Therefore, before invoking the provisions of S. 52(2) of the Act, the Income Tax Officer should have material before him because the onus is on the revenue on which he has to record a finding. Since the Income Tax Officer invoked the provisions of S. 52(2) of the Act, he would be having material before him and on the peculiar facts of this case, no jurisdiction has been shown by the revenue for further opportunity to collect the facts and material.

(Para 1).

Reference under Section 256(1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal, Amritsar Bench to the Hon'ble High Court of Punjab and Haryana for opinion of the following question of law arising out of the Tribunal's order dated 18th January, 1980, in ITA No. 860(ASR)/1978-79. Asstt. year 1975-76.

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the AAC erred in giving to the ITO a further opportunity to collect further facts and material relevant for the valuation of the land ?”

L. K. Sood, Advocate, for the Appellant.

S. S. Mahajan, Advocate, for the Respondents.

Commissioner of Income Tax, Amritsar v. Shri Kanti Kumar Sharma,
Amritsar (G. C. Mital, J.)

ORDER

Gokal Chand Mital, J.

(1) The assessee sold land measuring 379 sq. yards for Rs. 32,000 during the accounting year relevant to the assessment year 1975-76. The Income-tax Officer considered that the rate at which the land was sold was low and in view of the provisions of Section 52(2) of the Income-tax Act, 1961 (hereinafter called the 'Act') and some date before him added Rs. 63,388 as capital gain. On assessee's appeal, the Appellate Assistant Commissioner came to the conclusion that the Income-tax Officer had not arrived at a finding that sale price had been understated with a view to reduce the tax liability before applying the provisions contained in Section 52(2) of the Act and relied upon *Addl. C.I.T. v. P. S. Kuppuswamy* (1). In this view of the matter, the assessment was set aside with a direction to the Income-Tax Officer to follow the procedure for invoking the provisions of section 52(2) of the Act. At the same time, the Income-Tax Officer was allowed to collect more material to arrive at a finding as to whether the transactions have been understated with a view to reduce the tax liability. Against the order of the Appellate Assistant Commissioner, the assessee went up in appeal before the Income-tax Appellate Tribunal, Amritsar, and the prayer was made that after setting aside the order of the Income-tax Officer, the matter should not have been remanded for fresh decision and in any case permission should not have been granted for collecting fresh material. The Tribunal refused to set aside the remand order, but agreed with the assessee's prayer for not permitting the Income-Tax Officer to collect further material. Against the aforesaid order the revenue has got the following question referred to this Court for opinion :—

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the AAC erred in giving to the ITO a further opportunity to collect further facts and material relevant for the valuation of the land ?”

Keeping in view the decision in *P. S. Kuppuswamy's case* (supra) of Madras High Court and *K. P. Varghese v. I.T.O.* (2), of the Supreme Court, we are of the view that the provisions of section

(1) 112 I.T.R. 1012.

(2) 131 I.T.R. 597.

52(2) of the Act can be invoked only where the consideration for the transfer of a capital asset has been understated by the assessee, or, in other words, the full value of the consideration in respect of the transfer is shown at a lesser figure than that actually received by the assessee, and the burden of proving such understatement or concealment is on the revenue. The understatement or not showing the full value of the consideration would be with a view to reduce the tax liability. Therefore, before invoking the provisions of section 52(2) of the Act, the Income-tax Officer should have material before him because the onus is on the revenue on which he has to record a finding. Since the Income-tax Officer invoked the provisions of Section 52(2) of the Act, he would be having material before him and on the peculiar facts of this case, no jurisdiction has been shown by the revenue for further opportunity to collect the facts and material. Even in the order of the Appellate Assistant Commissioner no foundation was laid for such permission.

(2) For the reasons recorded above, we are of the opinion that the Tribunal was right in holding that the Appellate Assistant Commissioner erred in giving to the Income-tax Officer a further opportunity to collect further facts and material relevant for the valuation of the land. Accordingly, we answer the question in favour of the assessee i.e. in the affirmative.

P.C.G.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

M/S CHIRANJI LAL MULTANI MAL RAI BAHADUR (P),—*Respondent.*

Income Tax Reference No. 150 of 1979

December 15, 1988.

Income Tax Act (XLII of 1961)—S. 256(1)—Assessee allowed interest by the High Court—Income Tax Officer adding this amount in assessee's income.—Such amount—Whether ex-gratia payment—Whether can be taxed.