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

COMMISSIONER OF INCOME TAX, PATIALA, *Applicant.*

versus

DIDAR SINGH,—*Respondent.*

Income Tax Reference No. 41 of 1982

February 21, 1989.

Income Tax Act (XLIII of 1961) as amended by Finance Act of **1970**—*Ss.* **2(14), 45, 47(viii)** *and* **55(2)**—*Agricultural land acquired by* ***assessee by inheritance before*** *1st January,* **1954**—*Sale thereof on* **28th** *February,* **1970**—*Value of land for purposes of capital gains* ***tax—Whether*** *to be considered as on 1st January,* **1954** *or* **28th** ***February,*** **1970.**

Held, that S. 45 of the Income Tax Act, 1961 is the charging section for capital gains and this was on the statute book long before the amendment was made in the definition of capital assets by the Finance Act of 1970. The effect of the amendment is that the agricultural land which was not within the ambit of capital assets was brought within the definition of capital assets and was chargeable to capital gain tax on transfer with the result that all the provisions of S. 45 onwards became applicable to it. The result would have been that the transfer of agricultural land made on or before 28th February, 1970 would also have been subjected to capital gains tax but by virtue of the same Finance Act clause (viii) was inserted in S. 47 of the Act. That is why all transfers made of agricultural land of the kind which come within the ambit of capital assets if made on or after the 1st day of March, 1970 would attract the provision of S. 45 of the Act, the charging section, and for working out the capital gains provisions from Ss. 46 to 55A of the Act would become applicable. Therefore, in calculating capital gains, reference will have to be made to S. 55 of the Act by virtue of sub-section (2) thereof cost of the land as on 1st January, 1954 has to be taken. Hence the value of the land as on 1st January, 1954 has to be taken into consideration for finding out the capital gains.

(Paras 3, 7).

Reference Under Section 256(1) *of the Income-tax Act,* 1961 *by the Income Tax Appellate Tribunal, Chandigarh 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* **9th** *June,* **1981** *in R.A. No.* 149/*Chd*/81 *in ITA No.* 1399/*ASR*/79, *and Cross Objection No.* 20/*ASR*/80 *Assessment year* 1975-76.

> *"Whether the Appellate Tribunal has been right in law in holding that the cost of acquisition or the value should be ascertained as on 28th February,* 1970 *for the purposes of*

purview of sub-clauses (a) and (b), came within the ambit of capital assets and amenable to capital gains tax which hitherto before were not amenable to capital gains tax. The word 'transfer' in relation to a capital asset is defined in Section 2(47) and includes 'sale'. Section 45 of the Act defines capital gains and is the charging section. Section 48 of the Act provides how to compute income chargeable under the head 'capital gains'. Section 49 provides for determining cost with reference to certain modes of acquisition including succession and inheritance. Section 55(2) of the Act provides for the cost of acquisition in relation to capital asset with reference to Section 48 and 49 of the Act. Section 55-A provides for making the reference to Valuation Officer at the instance of the Income Tax Officer if it is found necessary subject to the circumstances mentioned in that provision. Here reproduction of the relevant provisions of Section 55(2), as it stood at the time of the assessment year in question has become necessary :

> "Section 55(2)—For the purposes of Sections 48 and 49, "costs of acquisition" in relation to a capital asset,—
>
> (i) where the capital asset became the property of the assessee before the 1st of January, 1954, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee.
>
> (ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of Section 49, and the capital asset became the property of the previous owner before the 1st day of January, 1954 means the cost of the capital asset to the previous owner of the fair market value of the asset on the 1st day of January, 1954 at the option of the assessee."

Admittedly, the assessee acquired the land before the 1st day of January, 1954, by inheritance and the case would fall under Section 55(2) (ii) of the Act and the cost of the capital asset has to be taken as on the date of inheritance or the fair market value as on 1st January, 1954, at the option of the assessee. The assessee did not opt for the value on the date of death of his father, and, therefore, the fair market value as on 1st January, 1954 has to be taken. The argument raised on behalf of the assessee is that the agricultural land of the type in question became the capital asset chargeable to capital gains only because of the Finance Act of 1970, with

effect from 1st March, 1970 and therefore its value as on 28th February, 1970 is to be considered and not as on 1st January, 1954. This argument needs consideration. Section 45 of the Act is the charging section for capital gains and this was on the statute book long before the amendment made in the definition of capital assets by the Finance Act of 1970. The effect of the amendment is that the agricultural land which was not within the ambit of capital assets was brought within the definition of capital assets and was chargeable to capital gain tax on transfer with the result that all the provisions of Section 45 onwards became applicable to it. The result would have been that the transfer of agricultural land made on or before 28th February, 1970 would also have been subjected to capital gains tax but by virtue of the same Finance Act clause (viii) was inserted in Section 47 of the Act, to the following effect :

"47. Nothing contained in section 45 shall apply to the following transfers :

(i) to (vii)

(viii) any transfer of agricultural land in India effected before the 1st day of March, 1970."

That is why, all transfers made of agricultural land of the kind which come within the ambit of capital assets if made on or after the 1st day of March, 1970 would attract the provision of Section 45 of the Act, the charging section, and for working out the capital gain provisions from Sections 46 to 55-A of the Act would become applicable. Therefore, in calculating capital gains, reference will have to be made to Section 55 of the Act and by virtue of sub-section (2) thereof cost of the land as on 1st January, 1954 has to be taken. The capital gain would be the difference in that value from the sale proceeds. In this context, the amendments made by the Finance Act of 1970 do not militate in determining the cost of acquisition of the land in accordance with Section 55(2) of the Act as on 1st January, 1954. The Finance Act of 1970 brought certain qualities of agricultural land within the definition of capital assets for being subjected to capital gains on transfer. The aforesaid view of ours finds support from the following decisions :

Ranchhodbhai Bhaijibhai Patel v. *C.I.T. Gujrat* (1), *M. Venkatesan* v. *C.I.T.* (2), *C.I.T.* v. *M. Ramaiah Reddy* (3), *C.I.T.* v. *Smt. M. Subaida Beevi* (4).

(1) (1971) 81 I.T.R. 446 Gujrat.

(2) (1983) 144 I.T.R. 886 (Madras).

(3) (1986) 158 I.T.R. 611 (Karnataka).

(4) (1986) 160 I.T.R. 557 (Kerala).

Accordingly, we hold that the value of the land as on 1st January, 1954 had to be considered and not as on 28th February, 1970.

(4) Faced with the situation, the learned counsel for the assessee raised an argument that the levy of income-tax on agricultural income derived from sale of agricultural land would be *ultra vires*, the legislative powers of the Parliament as this matter falls within the State list and, therefore, the question of imposing tax on capital gains of sale of agricultural land under a Central Act would not arise, and on this argument the matter be decided in favour of the assessee. In support of the argument, reliance is placed on the following decisions :

Manubhai A. Sheth v. *N. D. Nirdudkar 2nd Income Tax Officer, A. II Ward Bombay* (5), *J. Raghottama Reddy* v. *I.T.O. (A.P.)* (6).

(5) The counsel for Revenue in reply submitted that the question of legislative competence, that is, the vires of the statute cannot be gone into in reference proceedings and for that matter the assessee has to challenge the provisions under Article 226 of the Constitution of India and for this he has relied upon our decision in *Commissioner of Income Tax Amritsar* v. *Ved Parkash Bhatia* (7). In the alternative, it is argued that the three High Courts in the following judgments have dissented from the decision of the Bombay High Court in *Manubhai A. Sheth's case* (supra), which has been followed by the A.P. High Court in *J. Raghottama Reddy's case* (supra), and have held that the imposition of capital gains tax on agricultural land is within the legislative competence of the Parliament, and is *intra vires* :

Ambala Mayanlal v. *Union of India* (8) *B. S. Jayachandra* v. *Income Tax Officer* (9), *C.I.T.* v. *T. K. Sarala Devi* (10).

(5) (1981) 128 I.T.R. 87 (Bombay).

(6) (1988) 169 I.T.R. 174 (A.P.).

(7) I.T.R. No. 31 of 81 decided on 17th January, 1989.

(8) (1975) 98 I.T.R. 237 (Gujrat).

(9) (1986) 161 I.T.R. 190 (Karnataka).

(10) (1987) 167 I.T.R. 136 (Kerala).

(6) In view of our decision in *Ved Parkash Bhatia's case* (supra), the counsel for the assessee cannot be permitted to raise the question of vires in reference proceedings, as we have no jurisdiction to go into the question of the legislative competence, and we have to decide the question referred, considering the provisions as applicable to the case and if the assess is keen to challenge the legislative competence that he can do only in a writ petition under Article 226 of the Constitution of India and not in reference.

(7) For the reasons recorded above, we answer the question in favour of the Revenue, that is, in the negative, and hold that the value of the land as on 1st January, 1954 has to be taken into consideration for finding out the capital gains. However, there will be no order as to costs.

R.N.R.

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

HINDUSTAN STEEL FORGINGS, RAJPURA,—*Applicant.*

versus

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

Income Tax Reference No. 43 *of* 1981

March 2, 1989.

Income Tax Act (XLIII of 1961)—Ss. 37, 40(*b*)—*Deduction—Interest on deposits—Interest paid by the firm to partners on deposit on behalf of their H.U.F.—Interest paid—Whether can be rightly allowed as permissible deduction under S.* 40(*b*).

Held, that in view of Para 2 and sub-para (b) of the circular issued by the Central Board of Direct Taxes and printed in the statute Section of 149 I.T.R. at page 127, under the heading "Reducing litigation" makes the matter absolute. We are of the opinion that the Tribunal erred in law in disallowing interest under S. 40(b) of the Act to the three individuals who were partners not in their individual capacity but on behalf of H.U.F. as *Kartas*. Hence it has to be held that the interest paid is permissible deduction under S. 40(b) of the Act.

(Paras 2 to 4).