

JANKI RAM BAHADUR RAM

v.

COMMISSIONER OF INCOME TAX, CALCUTTA

March 31, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Indian Income-tax Act, 1922 (11 of 1922), s. 10—Purchase of a different business—Sale-Profit—If taxable.

The assessee who was dealing in iron scrap and hardware had purchased a jute press and sold it at a profit. The Income-tax Officer brought to tax in the hands of the assessee, the profit arising out of this sale. The Appellate Tribunal modified the order and reduced the total income. At the instance of assessee the Tribunal referred to the High Court, the question, whether the surplus received by the assessee as a result of the sale of the jute press arose out of an adventure in the nature of trade and was, therefore, liable to tax. The High Court answered the question in affirmative. In appeal;

HELD: The question must be answered in the negative.

Granting that the assessee made a profitable bargain when he purchased the property and granting further that the assessee had, when he purchased it, a desire to sell the property, if a favourable offer was forthcoming, these could not without other circumstances, justify an inference that the assessee intended by purchasing the property to start a venture in the nature of trade. [609H-610A]

A profit motive in entering a transaction is no decisive, for, an accretion to capital does not become taxable income, merely because an asset was acquired in the expectation that it may be sold at a profit. [608F]

Purchase of the property by the assessee was an isolated transaction not related to the business of the assessee. [608G]

Case law referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 308 of 1964.

Appeal by special leave from the judgment and order dated September 10, 1962 of the Calcutta High Court in Income-tax Reference No. 115 of 1957.

A. V. Viswanatha Sastri, B. Sen Gupta and P. K. Ghosh, for the appellant.

N. D. Karkhanis and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by

Shah, J. The appellant is a Hindu undivided family and carries on business as a dealer in "iron scrap and hardware". Messrs. Hoare Miller and Company Ltd.—hereinafter called 'the Company'—were owners of a jute pressing factory installed on a piece of land belonging to the Company. Adjacent to that land were two pieces of land: one was leasehold, and the other held by the Company as a licensee from the Government of West

- A** Bengal. On January 21, 1941 the Company leased out to one Ramnath Bajoria the jute pressing factory together with the machinery standing on the land owned by the Company for ten months commencing from January 10, 1941. Ramnath Bajoria failed to vacate and deliver up possession of the premises demised to him, after the expiry of the period of the lease, and the
- B** Company instituted a suit in ejectment against him.

By an agreement dated October 31, 1942 the appellant agreed to purchase all the rights of the Company in the factory and the appurtenant premises for Rs. 2,45,000. On November 14, 1942 the Company delivered to the appellant possession of the property agreed to be sold, save and except the factory demised under

C the lease to Ramnath Bajoria and the machinery included in the lease. On February 26, 1943 the Company executed a conveyance in favour of the appellant conveying the factory and the appurtenant premises.

- On June 12, 1943 the appellant agreed to sell to one Ranada
- D** Prasad Saha the property purchased from the Company for Rs. 4,73,364/3/6 free from all encumbrances. On August 10, 1943 the appellant was substituted as a plaintiff in the suit filed by the Company against Ramnath Bajoria, and obtained possession of the factory premises. By a deed of conveyance dated September 30, 1943 the appellant conveyed to Ranada Prasad
- E** Saha the factory and the appurtenant premises and delivered possession thereof. In the deed of conveyance the property sold was described in three separate Schedules. Schedule I; Press House, office, residential buildings and three warehouses on land owned by the Company; Schedule II; leasehold land together with a warehouse known as Kalibari godown; Schedule III;
- F** two warehouses on land held as licensee by the Company from the Government of West Bengal.

- The Income-tax Officer, District II(1), Calcutta, brought to tax in the hands of the appellant Rs. 2,24,864 being the profit arising out of the sale of the property to Ranada Prasad Saha. The Income-tax Appellate Tribunal partially modified the order
- G** and reduced the total income by Rs. 7,000. The Tribunal then drew up a statement of case and referred the following question to the High Court of Judicature at Calcutta:

- “Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the surplus of Rs. 2,35,211 received by the assessee as a result of the sale of the jute press referred to in the Appellate order arose out of an adventure in the nature of trade and was therefore rightly assessed to tax?”
- H**

The High Court answered the question in the affirmative. With special leave granted by this Court, the appellant has appealed to this Court.

At the material time, capital gains were not taxable, and the only question falling to be determined is whether profit made by the appellant by sale of the property to Ranada Prasad Saha was taxable under s. 10 of the Indian Income-tax Act. The Tribunal found the following facts proved:

The appellant was carrying on business in iron scrap and hardware and never carried on any business in jute or in pressing jute. At the material time when the purchase of the Jute Press was made, the appellant had, because of abnormal conditions prevailing in the town of Calcutta, closed its business in iron scrap and hardware. The appellant purchased the jute press and the premises appurtenant thereto subject to litigation pending in the High Court, effected certain repairs and kept the factory in running condition, but made no attempt to start or organise the business of pressing jute, and his plea that he was not able to secure labour for working the press was not true. Soon after he bought the factory, the appellant received an offer from Ranada Prasad Saha to buy the factory and he immediately accepted the offer to sell it to him.

These facts in the view of the Tribunal indicated that the appellant purchased the jute press, subject to litigation, with the sole object of reselling at profit at the earliest opportunity, and therefore the transaction was in the nature of a trading venture. The High Court substantially agreed with this view.

Section 10 of the Indian Income-tax Act, 1922 makes profits and gains of business, profession or vocation carried on by an assessee taxable. The expression "business" is defined in s. 2(4) as inclusive of "any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture". It is common ground that the transaction of purchase and sale of the factory and appurtenant premises was an isolated venture. To reiterate the sequence of material events: the appellant agreed to purchase the Jute Press from the Company on October 31, 1942 subject to litigation pending in the High Court of Calcutta: possession of the property except the premises in the occupation of the tenant was obtained on November 14, 1942 and the sale deed was obtained on February 26, 1943: on June 12, 1943 the appellant agreed to sell the press to Ranada Prasad Saha: on August 10, 1943 the appellant was substituted as plaintiff in the suit filed by the Company against Ramnath Bajoria, and after obtaining possession of the demised premises the appellant executed on September 30, 1943 a sale deed conveying the property and delivered possession to Ranada Prasad Saha. Do these facts make out the case that the transaction was an adventure in the nature of trade?

It is for the revenue to establish that the profit earned in a transaction is within the taxing provision and is on that account liable to be taxed as income. The nature of the transaction must

- A be determined on a consideration of all the facts and circumstances which are brought on the record of the income-tax authorities. It has consistently been held by this Court that the question whether profit in a transaction has arisen out of an adventure in the nature of trade is a mixed question of law and fact: see *G. Venkataswami Naidu & Company v. The Commissioner of Income-tax*⁽¹⁾ in which case this Court held that the expression "adventure in the nature of trade" in sub-s. (4) of s. 2 of the Act postulates the existence of certain elements in the adventure which in law would invest it with the character of trade or business and that a tribunal while considering a question whether a transaction is or is not an adventure in the nature of trade, before arriving at its final conclusion on facts, has to address itself to the legal requirements associated with the concept of trade or business. Such a question is one of mixed law and fact and the decision of the tribunal thereon is open to consideration under s. 66(1) of the Act. See also *Saroj Kumar Majumdar v. Commissioner of Income-tax, West Bengal*⁽²⁾.
- D A large number of cases were cited at the Bar in support of the respective contentions of the Commissioner and the assessee. Passages from judgments in the same case were often cited claiming support for the respective contentions. No useful purpose would be served by entering upon a detailed analysis and review of the observations made in the light of the relevant facts, for no single fact has decisive significance, and the question whether a transaction is an adventure in the nature of trade must depend upon the collective effect of all the relevant materials brought on the record. But general criteria indicating that certain facts have dominant significance in the context of other facts have been adopted in the decided cases. If, for instance, a transaction is related to the business which is normally carried on by the assessee, though not directly part of it, an intention to launch upon an adventure in the nature of trade may readily be inferred. A similar inference would arise where a commodity is purchased and sub-divided, altered, treated or repaired and sold, or is converted into a different commodity and then sold. Magnitude of the transaction of purchase, the nature of the commodity, subsequent dealings and the manner of disposal may be such that the transaction may be stamped with the character of a trading venture: for instance, a man who purchases a large quantity of aeroplane linen and sells it in different lots, and for the purpose of selling starts an advertising campaign, rents offices, engages an advertising manager, a linen expert and a staff of clerks, maintains account books normally used by a trader, and passes receipts and payments in connection with the linen through a separate banking account: *Martin v. Lowry*⁽³⁾: a person who carries on a money-lending business purchases very cheaply a

(1) [1959] Supp. 1 S.C.R. 646.

(2) 11 T.C. 297.

(3) 37 I.T.R. 242.

vast quantity of toilet paper and within a short time thereafter sells the whole consignment at a considerable profit: *Rutledge v. The Commissioner of Inland Revenue*⁽¹⁾; a person even though he has no special knowledge of the trade in wines and spirits, purchases a large quantity of whisky sells it without taking delivery of it at a considerable profit: *Commissioners of Inland Revenue v. Fraser*⁽²⁾, may be presumed having regard to the nature of the commodity and extent of the transaction coupled with the other circumstances, to be carrying on an adventure in the nature of trade. These are cases of commercial commodities. But a transaction of purchase of land cannot be assumed without more to be a venture in the nature of trade. A director of a company carrying on the business of warehouseman purchasing a number of houses with a view to resale, and selling them at a profit some years after the purchase: *Commissioners of Inland Revenue v. Reinhold*⁽³⁾; a person carrying on business in various lines, including an Engineering Works, purchasing land which was under requisition by the Government, negotiating sale thereof before the land was derequisitioned, and selling it after the land was released: *Saroj Kumar Mazumdar v. Commissioner of Income-tax, West Bengal*⁽⁴⁾; and a syndicate formed to acquire, an option over a rubber estate with a view to earn profit, and finding the estate acquired too small acquiring another estate and selling the two estates at a profit: *Leeming v. Jones*⁽⁵⁾ may not be regarded as commencing a venture in the nature of trade. These are cases in which the commodity purchased and sold is not ordinarily commercial, and the manner of dealing with the commodity does not stamp the transaction as a trading venture.

It may be emphasized from an analysis of these cases that a profit motive in entering a transaction is not decisive, for, an accretion to capital does not become taxable income, merely because an asset was acquired in the expectation that it may be sold at profit.

Purchase of the property by the appellant was an isolated transaction not related to the business of the appellant. The Tribunal and the High Court were, in our judgment, in error in holding that the right of the Company was not sold to the appellant in the lands in Sch. II and Sch. III properties. The land in Sch. II was leasehold, and on it was constructed a warehouse and the land in Sch. III was held as a licensee and two warehouses were standing thereon. The conveyance by the Company to the appellant is not on the record, but the recitals in the deed dated September 30, 1943 definitely indicate that the rights of the Company without any reservation were purchased by the appellant, and the appellant sold its entire rights in the properties in Schs. I,

(1) 14 T.C. 490.

(2) 24 T.C. 498.

(3) 34 T.C. 389.

(4) 11 T.C. 297.

(5) 15 T.C. 333.

- A** II and III without any reservation. It is true that the appellant had put the factory in a working condition, but had not organized a jute pressing business, had not obtained a licence for working the factory, had not attempted to secure orders for pressing jute, and had not employed labourers. The appellant's claim that it was not so done because the appellant could not secure labourers has not
- B** been accepted. But that is not a decisive circumstance. The factory was in the occupation of the lessee Ramnath Bajoria and possession was obtained after August 10, 1943. But before the 10th of August an agreement of sale was executed by the appellant in favour of Ranada Prasad Saha. In the light of the sequence of events, the inference that the appellant had no intention to commence doing jute pressing business does not necessarily follow. Even if that inference be regarded as binding upon
- C** the Court it cannot be presumed that the sole intention of the appellant was to start a venture in the nature of trade. Barring the expectation of profit and realization of profit by sale of the property, there is no evidence bearing on the intention with which
- D** the property was purchased.

In the deed of conveyance dated September 30, 1943 there is a reference to delivery of "joists, girders, fabricated steel, C.I. roofs, bolts, nuts, hooks and ceiling planks, being portions of the materials of the godowns and structures" standing on the land described in the third schedule. It was submitted that after purchasing the factory and the appurtenant premises the appellant demolished "certain godowns" in Sch. III land and sold the material as scrap. This, it was claimed, was—if not part of the business—a venture similar to the normal business of the appellant. But there is no evidence on the record as to how many

E warehouses stood originally on Sch. III land. The sale deed dated September 30, 1943 clearly states that there were two warehouses on steel-frames on the land held as licensee by the Company and possession of these was given to the purchaser Ranada Prasad Saha. Beside these warehouses, there were three warehouses on the land described in Sch. I and one warehouse on the land described in Sch. II. It is not claimed that these warehouses were

F insufficient for carrying on the business of jute pressing: nor is there any evidence that the warehouse or warehouses which were demolished were in a serviceable condition. The only fact which may be taken to be established is that a warehouse or warehouses were demolished by the appellant and the materials

G were sold as part of the property sold under the deed dated September 30, 1943. From this circumstance, an inference that the entire property was purchased with intent to demolish and dispose of as scrap cannot be raised.

H

Granting that the appellant made a profitable bargain when he purchased the property, and granting further that the appellant had when he purchased it a desire to sell the property, if a favourable offer was forthcoming, these could not without other

circumstances justify an inference that the appellant intended by purchasing the property to start a venture in the nature of trade. Absence of advertisement inviting offers for purchasing the property, and absence of brokers in the negotiations for sale between the appellant and Ranada Prasad Saha, are circumstances which lead to no positive inference. There is nothing to show that the appellant desired to convert the property to some other use. No brokers were employed for entering into a transaction of sale. It appears that Ranada Prasad Saha on coming to learn that the factory was for sale approached the Company after the sale deed was executed in favour of the appellant and he was informed that it had already been sold to the appellant. Thereafter Saha contacted the appellant and agreed to purchase the property. The property purchased was not such that an inference that a venture in the nature of trade must have been intended by the appellant in respect thereof may be raised. A person purchasing a jute press may intend to start his own business even if he is not already in that business, or he may let it out on favourable terms. The property purchased by the appellant was capable of being let out and it had in fact been let out by the Company before the date of sale in favour of the appellant. It was capable of fetching annual income, and there is no evidence that at the material time it could not be reasonably let out.

We therefore discharge the answer given by the High Court in respect of the question submitted by the Tribunal and record a negative answer. The appeal is allowed. The Commissioner to pay the costs in this Court and the High Court.

Appeal allowed.