

A COMMISSIONER OF INCOME-TAX, WEST BENGAL II

v.

RAJASTHAN MINES LTD., CALCUTTA

May 5, 1970

B [J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Indian Income-tax Act, (11 of 1922)—Assessee purchases proprietary rights with arrears of rent and royalty—Whether receipt of the arrears taxable—Assessee sells—Profit if taxable—finding of Tribunal, if open to review by High Court.

C The assessee-company purchased the proprietary interests in lands rich in coal and fireclay. The deeds assigned to the assessee the vendors' right to receive arrears of rent and royalty in pursuance of the agreement between the vendors and third parties. Later the assessee sold its right since it could not win the mines for want of finances. The Income-tax Officer assessed the entire arrears of rent, and royalty to tax in the assessee's hands as revenue receipts. He also assessed the profit of the sale to tax as a business transaction. The Appellate Assistant Commissioner, and the Tribunal agreed with the orders. The Tribunal found that the assessee was heavily indebted to the vendor but there was no evidence that the payment of the amount was pressed for; the memorandum of association of the assessee empowered it to acquire, sell and dispose of and deal with mines and mining properties; as a major part of the land purchased by the assessee was in possession of other mining companies, it was not possible for the assessee to undertake any large scale and profitable mining operations; the assessee sold the lands purchased by it for a profit; and the properties purchased were sold very soon after they were purchased. But the High Court differed from these conclusions. Dismissing the appeals, this Court :—

F **HELD :** (i) The purchase of the right to collect arrears of rent and royalty could not be considered as an income. It was true that the assessee purchased the lessors' right from the vendor in pursuance of the agreements entered into by the vendor with third parties whose rights had been acquired by the assessee. The assessee company had been incorporated on Jan. 23, 1947. Therefore, it could not have got any right in the property prior to the conveyance in its favour on Dec. 22, 1947. As per the terms of the conveyance, the assessee becomes entitled to the arrears of rent and royalty as a purchaser of those rights. It had no right to collect these arrears of rent and royalty as the owner of the property. It may be that in determining the price payable under the conveyance, the arrears of rent and royalty were not taken into consideration. But that did not change the nature of the right acquired by the assessee. [520 D]

H (ii) The findings of the Tribunal did not afford any basis to it to come to the conclusion that the purchases made by the assessee and the subsequent sale were in the nature of a trading adventure. The circumstances that the memorandum of association of the assessee permitted the assessee to acquire and sell and dispose of and deal with mining properties was an inconclusive one. It was not shown that the assessee had acquired or sold any other property. The fact that the assessee sold property purchased by it for profit was not decisive in finding out whether the sale was effected in the course of the business of the assessee. From the fact

that the assessee could not undertake large scale and profitable mining in the area which was in its possession, no inference may be drawn that lands were acquired with a view to sell later on nor the circumstance that the properties were sold very soon after they were purchased affords any basis for the conclusion that the sale in question was effected in the course of the business. [521 B]

(iii) If the finding of fact is based on an inference from the primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within narrow limits. It is open to the parties to challenge a conclusion of fact drawn by the tribunal on the ground that it is not supported by any legal evidence or that the impugned conclusion drawn from the relevant facts is not rationally possible. If such a plea is established, the Court has to consider whether the conclusion in question is not perverse and should not, therefore, be set aside. On the facts of this case, the High Court was justified in examining the correctness of the inference drawn by the Tribunal on the basis of the primary facts found by that Tribunal. [521 E]

G. Venkataswami Naidu and Co. v. Commissioner of Income-tax, 35 I.T.R. 594; followed.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1627 and 1628 of 1968.

Appeals from the judgment and order dated January 19, 1965 of the Calcutta High Court in Income-tax Reference No. 240 of 1961.

S. Mitra, G. C. Sharma, R. N. Sachthey and D. B. Sharma, for the appellant (in both the appeals).

The respondent did not appear.

The Judgment of the Court was delivered by

Hegde, J. This appeal by certificate arises from the decision of the Calcutta High Court rendered in a reference made to it by the Income Tax Appellate Tribunal, 'B' Bench, Calcutta under s. 66(1) of the Indian Income-tax Act, 1922 (which will hereinafter be referred to as the 'Act'). Alongwith its statement of case, the tribunal submitted two questions to the High Court for its opinion. They are :

"(1) Whether on the facts and in the circumstances of the case, the sums of Rs. 2,55,733/- and Rs. 3,00,332/- receivable by the assessee as arrears of royalty and rent were assessable as the income of the assessee for the assessment years 1948-49 and 1950-51 respectively ? and

(2) Whether on the facts and circumstances of the case the sum of Rs. 2,80,000/- being the surplus derived by the assessee on sale of property was assessable as the income of the assessee for the assessment year 1950-51."

A The facts set out in the statement of the case, in brief are as follows :

B The assessee M/s. Rajasthan Mines Ltd. is a public limited, Company incorporated on January 23, 1947. The Raja of Ramgarh was the landlord of the North and South Karanpura fields covering about 312 villages. Those tracts of lands were rich in coal and fireclay. M/s. Karanpura Development Co. Ltd., held coal mining licence in about 14 of those villages. It also held fire-clay leases in about 8 villages and leases of other minerals in portions of two villages. That Company had also a prospecting licence for the coal in the said fields with the option to take further coal mining leases. The leases were also held by three other parties **C** namely South Karanpura Development Ltd., Janab Mohammad Kamruddin and Jagadish Prasad Bhagat in respect of other parcels of land, in these fields. By an indenture dated December 22, 1947 (registered on the 26th of February, 1948), in pursuance of agreements dated September 20, 1945 and August 7, 1947, the assessee acquired from the Raja of Ramgarh proprietary interest in all those leased out lands, more fully specified in the schedule **D** appended to the said indenture. By the said indenture, the Raja of Ramgarh also transferred and assigned to the assessee his right to receive the arrears of rent and royalty from the lessees with effect from September 1, 1946. The consideration paid by the assessee for the acquisition of the proprietary rights with the right to realise and recover the arrears of rent and royalties was Rs. 5 **E** lacs.

For the assessment year 1948-49, the Income-tax Officer assessed the entire amount of arrears of rent and royalty receivable from the said lessees, from September 1, 1946 upto the date of conveyance namely December 22, 1947, as the assessee income for the previous year ended on the 31st March, 1948. The net **F** amount included in the assessment under that head was Rs. 2,55,733/-.

In the previous year ended on December 31, 1949 relevant for the assessment year 1950-51, the assessee purchased another lot of villages from the Raja of Ramgarh as per the conveyance dated January 24, 1949, in pursuance of the agreements already **G** referred to for a consideration of Rs. 2 lacs with all arrears of rent and royalty which on December 31, 1948 amounted to Rs. 3,00,332/-. On August 13, 1949, the assessee sold away his right, title and interest in the major portion of the villages acquired under the aforesaid deeds of conveyance dated December 22, 1947 and January 24, 1949 to Sirka Valley Coal Co. Ltd. and three other parties for a total sum of Rs. 7,50,000/-. **H** The Income-tax Officer treated the entire arrears of rent and royalty amounting to Rs. 3,00,332/- as revenue receipts of the assessee taxable during the assessment year 1950-51. He also treated the

sale of the lands by the assessee as a business transaction and taxed a sum of Rs. 2,20,000/- as the net profit of the assessee arising from the sale, which profit was recomputed by the Appellate Assistant Commissioner at Rs. 2,80,000/-. The Income-tax Appellate Tribunal agreed with those conclusions. A

The High Court of Calcutta differing from the conclusions reached by the Income-tax Officer, Appellate Assistant Commissioner and the Tribunal came to the conclusion that the sums of Rs. 2,55,733/- and Rs. 3,00,332/- receivable by the assessee as arrears of royalty and rent were not assessable as the profits of the assessee for the assessment year 1948-49 and 1950-51 respectively. It also disagreed with the conclusions reached by the Income-tax Officer, Appellate Assistant Commissioner and the Tribunal that profit made by the assessee by the sale of the properties purchased from Raja of Ramgarh was assessable as the income of the assessee for the assessment year 1950-51. Aggrieved by that order, the Commissioner of Income-tax, West Bengal has come up in appeal to this Court. B C

We are in agreement with the High Court that the purchase of the right to collect arrears of rent and royalty cannot be considered as an income. It is true that the assessee purchased the lessor's right from the Raja of Ramgarh in pursuance of the agreements entered into by the Raja of Ramgarh with third parties whose rights had been acquired by the assessee. The assessee company had been incorporated, as seen earlier, on January 23, 1947. Therefore it could not have got any right in the property prior to the conveyance in its favour on December 22, 1947. As per the terms of the said conveyance, the assessee became entitled to the arrears of rent and royalty as a purchaser of those rights. It had no right to collect those arrears of rent and royalty as the owner of the property. It may be that in determining the price payable under the conveyance, the arrears of rent and royalty were not taken into consideration. But that does not change the nature of the right acquired by the assessee. Hence we agree with the High Court that the first question referred to earlier must be answered in favour of the assessee. D E F

Now coming to the second question, according to the assessee, it purchased the tracts of land in question with a view to win mines but for want of finance, it was compelled to sell the same. The primary facts found by the tribunal are : (1) the assessee was heavily indebted to Raja of Ramgarh but there was no evidence to show that the Raja was pressing for the payment of the amount due to him; (2) the memorandum of association of the assessee gave it power to acquire, sell and dispose of and deal with mines and mining properties; (3) as a major part of the land purchased by the assessee was in the possession of the other mining Companies, it was not possible for the assessee to undertake any large scale and G H

- A profitable mining operations; (4) the assessee sold the lands purchased by it for a profit and (5) the properties purchased were sold very soon after they were purchased.

- The above findings did not afford any basis to the tribunal to come to the conclusion that the purchases made by the assessee and the subsequent sale were in the nature of a trading adventure.
- B The circumstance that the memorandum of association of the assessee permitted the assessee to acquire, and sell and dispose of and deal with mining properties is an inconclusive one. It is not shown that the assessee had acquired or sold any other property. The fact that the assessee sold property purchased by it for profit is not decisive in finding out whether the sale was effected in the
- C course of the business of the assessee. From the fact that the assessee could not undertake large scale and profitable mining in the area which was in its possession, no inference may be drawn that lands were acquired with a view to sell later on, nor the circumstance that the properties were sold very soon after they were purchased affords any basis for the conclusion that the sale in
- D question was effected in the course of the business. The primary facts found either individually, or collectively could not have afforded a basis for arriving at the conclusion that the transaction in question was an adventure in trade.

- It was urged on behalf of the Revenue that the finding of the tribunal that the purchase and sale of lands were made in the
- E course of business being a finding of fact, it was not open to the High Court to interfere with that finding. But as observed by this Court in *G. Venkataswami Naidu and Co. v. Commissioner of Income-tax*⁽¹⁾, if the finding of fact is based on an inference from the primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within
- F narrow limits. It is open to the parties to challenge a conclusion of fact drawn by the tribunal on the ground that it is not supported by any legal evidence or that the impugned conclusion drawn from the relevant facts is not rationally possible. If such a plea is established, the court has to consider whether the conclusion in question is not perverse and should not, therefore, be set aside. On
- G the facts of this case the High Court was justified in examining the correctness of the inference drawn by the Tribunal on the basis of the primary facts found by that Tribunal.

For the reasons mentioned above, we agree with the High Court that the second question referred to it for its opinion must also be answered in favour of the assessee.

- H In the result these appeals fail and they are dismissed.

Y.P.

Appeals dismissed.