

Commissioner of Income-tax (Central), Ludhiana v. M/s New Suraj Transport Co. Pvt. Ltd., Amritsar (S. S. Sodhi, J.)

the Public Analyst. Such a person is to approach the Court where complaint was filed. In Gurdaspur there were four Judicial Magistrates. From the notice served it could not be said as to which of the Judicial Magistrates was to be approached by the accused for getting the second sample of food sent to the Central Food Laboratory. In the present cases the accused did not exercise such a right and their defence was prejudiced as it was not mentioned in the notice that the cases were pending in the Court of Chief Judicial Magistrate, to whom they could approach for sending second samples for test. Section 13(2) of the Act is mandatory. Non-compliance of the same vitiates the trial. The trial court was fully justified in acquitting the accused on this ground. Both the appeals are dismissed.

R.N.R.

Before : S. S. Sodhi & N. K. Kapoor, JJ.

COMMISSIONER OF INCOME-TAX (CENTRAL), LUDHIANA,—
Applicant

versus

M/S. NEW SURAJ TRANSPORT CO. PVT. LTD., AMRITSAR.—
Respondent.

Income-tax Reference No. 24 of 1980.

28th May, 1991.

Income-tax Act (XLIII of 1961)—Ss. 41(2) & 45—Route permit for Stage Carriage acquired for the first time in a self-generated asset—Sale of route permits alongwith buses—Consideration of sale is not amenable to Capital Gains Tax—Transfer of route permit is akin to transfer of 'Goodwill' and, therefore, not an asset within the meaning of S. 45.

Held, that the route permit acquired for the first time must be treated as a self-generated asset, the consideration for the sale of which is not amenable to Capital Gains Tax.

(Para 6)

Income Tax Reference from the order of the Income Tax Appellants Tribunal, Amritsar, dated 3rd November, 1979 arise out of R.A. No. 121 (ASR)/79 and Arising out of I.T.A. No. 238/78-79. Assessment Year 1974-75.

The following questions of law has been referred to this Hon'ble Court (Punjab and Haryana High Court, Chandigarh) for its opinion.

- No. 1. *Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in deleting the addition of Rs. 3,65,330 under section 41(2) of the Income-tax Act, 1961 and Rs. 1,15,343 under capital gains made by the Income-tax Officer on account of sale of 21 passenger buses of the fleet of the assessee Company to M/s Jolly Engineers and Contractors (P) Ltd. by construing the agreement of sale, dated 10th January, 1973 as including in the total consideration of Rs. 14,50,000 a sum of Rs. 5 lacs, credited under the head "Goodwill" in its profit and loss account, as representing the value of route permits numbering 24 which were passed on with a stipulation to pass on permits to be received in future by the assessee company.*
- No. 2. *Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in repelling the contention of the Revenue to the effect that even if some price was intended to be paid under the agreement for the various rights and advantages mentioned therein, the price so payable could only be described as trading profit or short term capital gain liable to income tax.*
- No. 3. *Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in holding that the route permits were capital assets acquired free of cost by the assessee Company and the price realised on their sale was also not liable to capital gains.*

Ajay Kumar Mittal, Advocate, for the Petitioner.

G. C. Sharma, Sr. Advocate with Anoop Sharma, Advocate and S. S. Mahajan, Advocate, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The controversy here, in the context of the levy of capital Gains Tax, is with regard to the value, if any, to be ascribed to route permits sold along with the buses.

(2) The matter here pertains to the Assessment year 1974-75. The Assessee is a Private Limited Company, which was previously

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carrying on the business of plying passenger buses, but it discontinued doing so during the accounting period in question having sold its fleet of buses along with 24 route permits to Messrs Jolly Engineers and Contractors Private Limited. This sale was made under an agreement of January 10, 1973 for a total consideration of Rs. 14,50,000. A sum of Rs. 2,88,475 was credited by the assessee as profit from sale of its vehicles while Rs. 5,00,000 was credited under the Head 'Good Will' in its Profits and Loss Account. The Income Tax Officer held that there was no sale of 'Good Will' and the entire price realised by the assessee represented the sale price of the buses sold. This order was later up-held in appeal by the Appellate Assistant Commissioner. The Tribunal, however, agreed with the Assessee and held that the route permits were property which were acquired free of cost and hence no Capital Gain could be computed. It was further held that the value of Rs. 5,00,000 placed upon them by the assessee was not unreasonable. It is in this factual background that the following three questions came to be referred to this Court for its opinion, namely:—

- “(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in deleting the additions of Rs. 3,65,330 under section 41(2) of the Income Tax Act, 1961 and Rs. 1,15,343 under capital gains made by the Income-Tax Officer on account of sale of 21 passenger buses of the fleet of the assessee company to M/s Jolly Engineers & Contractors (P) Ltd., by construing the agreement of sale, dated 10th January, 1973 as including in the total consideration of Rs. 14,50,000 a sum of Rs. 5 lakhs, credited under the head “Goodwill” in its profit and loss account, as representing the value of route permits numbering 24 which were passed on with a stipulation to pass on permits to be received in future by the assessee company?
- (2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in repelling the contention of the Revenue to the effect that even if some price was intended to be paid under the agreement for the various rights and advantages mentioned therein, the price so payable could only be described as trading profit or short term capital gain liable to income-tax?
- (3) Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in holding that the route

permits were capital assets acquired free of cost by the assessee company and the price realised on their sale was not liable to capital gains?

(3) It was the contention of Mr. Ajay Mittal, appearing for the revenue that the sale consideration of Rs. 14.5 lakhs constituted the sale consideration for buses and route permits transferred by the assessee and was thus profit within the purview of Section 41(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and thus exigible to tax. The argument being that the value of the route permits was inherent in the value of the buses. In this behalf, it was further added that the cost of the route permit as not indeterminate. Route permits, it was said, had a cost of acquisition even if it may be nil. In other words, it was argued that if the cost of acquisition of a capital asset is determinable, capital gains tax is leviable, even if such asset has a nil cost of acquisition. To put in another way, it was contended that it cannot be said in respect of an asset whose cost of acquisition is determinable that there is no cost of acquisition because the cost, according to Section 55(2) of the Act would be the fair market value of such an asset, even if its cost of acquisition is nil. The point thus canvassed with that it is only where the cost of acquisition is not determinable that no Capital Gains Tax is exigible.

(4) Turning specifically to route permits, counsel for revenue cited in support the two judgments of the High Court of Madras in *K. Balasubramania Nair v. Commissioner of Income Tax, Tamil Nadu-II* (1) and *Commissioner of Income Tax, Tamil Nadu-II v. Shri Venkatesware Bus Union* (2), where, it was held that a route permit was not a self-generated asset and that some cost would have to be incurred in its acquisition and after working out such cost, its sale consideration would be amenable to Capital Gains Tax. in accordance with the provisions of the Act.

As regards route permits and their sale, in the context of Capital Gain or profit, there is, in fact a conflict of judicial opinion on the subject, namely: whether or not such gains or profits are amenable to Capital Gains Tax. Both the High Court of Kerala as also that of Andhra Pradesh have taken a contrary view in *Commission of Income*

(1) 119 I.T.R. 504.

(2) 119 I.T.R. 507.

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Tax v. P. S. N. Motors (P) Ltd. (3) and *Additional Commissioner of Income Tax, A.P. v. Ganapathi Raju Jegi Sanyasi Raju* (4), respectively. It being held in *P. S. N. Motors (P) Ltd.'s case* (supra) that where a person obtains a route permit for the first time and then transfers it, such transfer is akin to the transfer of Goodwill, a self-generated asset. It would have no cost of acquisition and since no cost of acquisition can be predicated for the route permit obtained for the first time, no tax on Capital Gains can be levied in respect of the transfer of such route permit. It being observed, "before any Capital Gains Tax can be levied, the asset sold must be such as is capable of having the cost of acquisition as contemplated under Section 48 of the Act. An asset to which Section 48 cannot be applied, cannot be brought to tax under Section 45 since the asset must possess the inherent quality of being available on expenditure of money to a person seeking to acquire it before it can be subjected to Capital Gains." A similar view finds expression in *Ganapathi Raju Jegi Sanyasi Raju's case* (supra).

(5) The judicial precedent of significant relevance comes from the Supreme Court in *Commissioner of Income Tax Bangalore v. B. C. Srinivasa Setty* (5), where the question posed was whether the transfer of 'Goodwill' of a newly commenced business could give rise to a Capital Gain Taxable under Section 45 of the Income Tax Act, 1961. In dealing with this matter, it was observed that Section 45 of the Act is the charging Section and for the purposes of imposing the charge, Parliament has enacted detailed provisions in order to compute the profits or accounts under that Head. It was accordingly held that a transaction to which these provisions could not be applied must be taken as never intended by Section 45 to be the subject of the charge. Further, it was observed that none of the provisions pertaining to the Head "Capital Gain" suggest that they include an asset, in the acquisition of which, no cost at all can be conceived. It was accordingly held that 'Goodwill' generated in a newly commenced business cannot be described as an asset within the terms of Section 45 and therefore, its transfer was not subject to Income Tax under the Head "Capital Gains."

(3) 180 I.T.R. 345.

(4) 119 I.T.R. 715.

(5) 128 I.T.R. 294.

(6) After giving the matter our most earnest consideration, we, with respect, prefer the view of the High Court of Kerala in *P. S. N. Motors (P) Ltd.'s case* (supra) as being more in accord with the context of the provisions and the scheme of the Income Tax Act, 1961 and the judgment of the Supreme Court in *B. C. Srinivasa Setty's case* (supra). We consequently hold that the route permit acquired for the first time must be treated as a self-generated asset, the consideration for the sale of which, is not amenable to Capital Gains Tax. We accordingly answer all the questions referred in the affirmative in favour of the assessee and against revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before V. K. Jhanji, J.

PREM SINGH,—Petitioner.

versus

RUPINDER SINGH AND ANOTHER,—Respondents.

Civil Revision No. 1478 of 1991.

3rd June, 1991.

Punjab Co-operative Societies Act, 1961—S. 82, rl, 12(2) of Appendix 'C'—Election of Member challenged in Civil Court—Jurisdiction of Civil Court barred—Grant of interim injunction—Principles stated—Suit dismissed as withdrawn—Appeal entertained by the Appellate Court for grant of interim injunction—Such proceedings—Illegal and without jurisdiction.

Held, that the election of petitioner could be challenged only by way of election petition as provided under rule 12(2) of the Rules and not by way of filing civil suit as Section 82 of the Punjab Co-operative Societies Act, 1961 bars the jurisdiction of the Civil Court.

(Para 5)

Held, that *ad-interim* injunction though essentially is equitable relief but the grant or refusal of an injunction must rest in the sound judicial discretion of the Court to be exercised in the light of facts and circumstances of each case.

(Para 7)