

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

ITA.No. 125 of 2014 ()

AGAINST THE ORDER IN ITA 265/2012 of INCOME TAX APPELLATE
TRIBUNAL,COCHIN BENCH, COCHIN DATED 27-12-2013

APPELLANT/APPELLANT:

SRI. N.A.BABY
NEREPARAMBIL HOUSE, MANNAMPETTA P O, VARAKARA
THRISSUR

BY ADVS.SRI.ANIL D. NAIR
SRI.SREEJITH R. NAIR
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH

RESPONDENT/RESPONDENT:

DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, THRISSUR - 680 001

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, ALONG WITH ITA NO.127/2014, THE COURT ON 31.07.2015
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE – A : TRUE COPY OF THE ORDER OF ASSESSMENT FOR
THE YEAR 2008-09 ISSUED TO THE APPELLANT.

ANNEXURE – B : TRUE COPY OF THE ORDER OF THE COMMISSIONER
OF INCOME TAX (APPEALS)

ANNEXURE – C : TRUE COPY OF THE AGREEMENT DATED 19.10.2006.

ANNEXURE – D : TRUE COPY OF THE ORDER OF THE INCOME TAX
APPELLATE TRIBUNAL, COCHIN BENCH DATED
27.12.2013.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

I.T.A. Nos.125 & 127 of 2014

Dated this the 31st day of July, 2015

JUDGMENT

Shaji P. Chaly, J.

These appeals are preferred by the assessees against the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.265/2012 dated 27.12.2013 for the assessment year 2008-2009 and ITA No.266/2012 dated 27.12.2013 for the assessment year 2009-2010. Even though the learned Appellate Tribunal has disposed of the appeals vide separate orders, since the issues raised in these appeals and materials relied on by the Assessing Authority are common, these appeals are disposed of by this common judgment.

2. As per the orders referred above, the Appellate Tribunal has confirmed the order of the First Appellate Authority and held that the additions made by the Assessing Authority in the order of assessment are justified.

3. Brief facts leading to the case are as follows:

4. The assessee in ITA No.125 of 2014 has purchased an

extent of 944.43 cents of rubber plantation in Amballur Village, Thrissur District on 9.5.2007 and 7.7.2007 along with the appellant in ITA No.127 of 2014. The said property was later sold to E.P. Antony and A.A. Davis and others. A person named Sri.P.T. Pavunni was the middle man or broker in the deal. A search was conducted at the residence of Sri.P.T.Pavunni and during the search a sale agreement relating to the above said transaction of sale was seized. From the said seized agreement, it was noticed by the Assessing Authority that the selling price of the land was Rs.25,000/- per cent which was found to be higher than the value shown in the sale deeds. The buyer, A.A. Davis and the appellant in ITA No.125 of 2014 confirmed that the transaction was effected at the rate of Rs.25,000/- per cent. Accordingly, the Assessing Officer determined the sale consideration of the land by adopting Rs.25,000/- per cent.

5. The Assessing Authority has arrived at such a finding after overruling the objections raised by the appellants that the property sold was an agricultural land and hence the profit arising on its sale is exempted from payment of tax. The Assessing Authority found that the appellants did not carry out any agricultural operations and further that the land was sold within a short period of its purchase. Apart from the same, the

appellant in ITA No.125 of 2014 had confirmed that he did not carry on any agricultural activity on the said land. Added to this, the Assessing Authority has found that the nature of the property at the time of registration was converted into a barren land by removal of earth upto the rock bottom. Accordingly the Assessing Authority took the view that the transactions can only be considered as an adventure in the nature of trade and accordingly after providing sufficient opportunity to the appellants and complying with the procedures, finalised the assessment, taking into account the actual sale value shown in the seized agreement during the search operations.

6. Even though the appellants have taken up the matter in appeal, the First Appellate Authority confirmed the order of the Assessing Authority and it is aggrieved by the said order, the appellants preferred 2nd appeal before the Income Tax Appellate Tribunal, which affirmed the order of the Commissioner of Income Tax Appeals. It is thus aggrieved, these appeals are filed.

Questions of law raised in ITA No.125 of 2014:

- (i) In the facts and circumstances of the case, ought not the Tribunal have held that the appellant was entitled for exemption from the capital gains.
- (ii) In the facts and circumstances of the case, ought not the Tribunal have held that what was transferred to buyer was a rubber plantation and that transaction would come under Sub Clause 5 of Sub

Sec.47 under Sec.2 of the Act.

- (iii) In the facts and circumstances of the case, ought not the Tribunal have held that the purchase value for the purpose of computation of capital gains has to be reckoned as per Annexure C Agreement and on the basis of Statement recorded under Sec.132(4) of the Act.
- (iv) In the facts and circumstances of the case, ought not the Tribunal have held that the transactions does not partake the characteristic of adventure in the nature of trade.”

8. Question of law raised in ITA No.127 of 2014:

- (i) In the facts and circumstances of the case, ought not the Tribunal have held that the purchase value for the purpose of computation of capital gains has to be reckoned as per Annexure C Agreement and on the basis of Statement recorded under Sec.132 (4) of the Act.

9. Heard the learned counsel for the appellants and the learned Senior Counsel for the Revenue.

10. The learned counsel for the appellants contended that the appellants have actually purchased the property for Rs.10,250/- and Rs.10,500/- respectively per cent while the documented value was only Rs.1,000/- and therefore, they were entitled to set off the entire purchase value for the purpose of computation of tax while computing the tax against them in accordance with the agreement unearthed during the search

operation. So also the learned counsel contended that the property sold by the appellants was agricultural property having rubber plantation and on executing the agreements for sale of the said property, the prospective purchasers were put in possession and they were permitted to cut and remove the rubber trees and to remove soil from the said property. Therefore, in the facts and circumstances of the case, the assesses are entitled to get the benefit of tax exemption provided under the provisions of the Act, treating it as agricultural property.

11. Learned counsel for the appellants also contended that in view of Section 53A of the Transfer of Property Act and the agreement executed by the appellants with the prospective purchasers who were put in possession of the property and were allowed to carry out slaughter taping, cutting and removal of rubber trees and to remove soil from the property, there is substantial proof to show that the property transferred by the appellant was an agricultural property and that therefore he is not liable to pay any tax under the Act.

12. As stated earlier, appeals are relating to the assessment years 2008-2009 and 2009-2010. To answer the above contention of the appellants, we think it only appropriate to refer

to sub-section 1A of Section 17 of the Registration Act, which is extracted hereunder:

“(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and other related laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A.”

13. Sub-section 1A was introduced as per the Amendment Act 2001 and therefore, any agreement for transfer of property after introduction of sub-section 1A require mandatory registration in order to have effect for the purpose of Section 53A of the Transfer of Property Act. Admittedly the appellants have not registered the agreements for sale and therefore, as provided under sub-section 1A of Section 17 of the Registration Act, the same can only be deemed as an ineffective document for considering the question of part performance of the contract as contended by the appellants. In that circumstances, the appellants shall be deemed to have possessed the property till the sale deed was executed. Therefore the appellants are not entitled to get any advantage out of Section 53A of the Transfer of Property Act, and cannot contend that they had transferred

possession of an agricultural property entitling them to get exemption from payment of tax.

14. On the other hand, the learned Senior Counsel for the Revenue has taken us through the orders of the Assessing Authority and contended that the Assessing Authority has categorically found that when the property in question was sold, the same was barren land and there was no evidence to establish that the appellants have sold agricultural property to the buyers at the time of execution of sale deeds. It was the further contention of the learned Senior Counsel that at the time of execution of the sale deed, in accordance with the investigation and verification conducted by the Assessing Authority, the property in question was barren land and not agricultural property. Further more it was contended that on an enquiry by the Assessing Authority, it was found that no agricultural operations were carried on in the property after the land was purchased by the appellants. Apart from this, it was contended that since the sale carried out by the appellants was within a short period of its purchase, it was clear that the appellants carried out adventure in the nature of trade and therefore, the profit derived from such sale is liable to be assessed under the Act.

15. The learned Senior Counsel for the Revenue also contended that the Assessing Authority could unearth the actual sale price from the agreement seized on search from aforesaid Pavunni and thereby the assessing authority could ascertain the tax evaded by the appellants truly and correctly. Learned Senior Counsel also argued that there is no proof to establish that the appellants have paid the purchase price of Rs.10,250/- and Rs.10,500/- respectively per cent for the property against the documented value of Rs.1,000/- per cent and therefore, the Assessing Authority was right in holding so in the order of assessment which was confirmed by the authorities below.

16. Taking into account the rival contentions of the learned counsels, we are of the considered opinion that the Appellate Tribunal has discussed the entire issues put forth by the appellants and has arrived at a reasonable conclusion that the basis for adoption of sales price of Rs.25,000/- per cent was the sale agreement seized during search and also confirmation of the same by the appellant in ITA No.125 of 2014 and the purchaser of property, Sri.A.A. Davis in their sworn statements. It is therefore clear that the sale price of Rs.25,000/- per cent was arrived at basically relying on the sale agreement and not the sworn statement alone. Further the Tribunal has found that the

claim that the appellants have purchased the property for Rs.10,250/- and Rs.10,500/-respectively per cent made in the sworn statement of the appellant in ITA No.125 of 2014, was not corroborated by any proof or materials and therefore the Assessing Authority was left with no other alternative than to decline the claims so raised by the appellants. Further the Tribunal has found that the responsibility to substantiate the purchase consideration was on the appellants and appellants have not adduced any evidence or put forth any material to substantiate the case advanced by them and therefore, the claim of the appellants that they were entitled to seek reckoning of the amount allegedly paid by them when they effected purchase of the property cannot be considered to be real at all. The Appellate Tribunal has thereupon declined to interfere with the orders passed by the First Appellate Authority.

17. We have perused the entire materials on record. According to us, the circumstances which led to the addition of amounts in the assessment order was based fully upon the facts unearthed during the search operations at the residence of one Pavunni. Further the authorities below have found that there was no evidence at all to prove that while the property was conveyed by executing sale deed, the same was an agricultural

land. But on the other hand, the assessing officer has clearly found that the property in question was barren land and further it was revealed that after purchase of the property, no agricultural operations were carried on by the appellants and further that the property was sold within a short period which discloses nothing but an adventure in the nature of trade liable to be taxed under the Act. These are all circumstances based on facts and the authorities below have appreciated the contentions put forth by the appellants and arrived at a fair and reasonable conclusion that the agreement relating to the sale deed was a crucial document showing the exact price of the property, which was also not denied by the appellants. We do not think that in view of the factual situations referred above there are any substantial questions of law for us to consider the same invoking the powers conferred under Section 260A of the Act.

In the circumstances appeals fail and accordingly they are dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

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