

PETITIONER:

M. R. GOYEL, PROP. M/S MILKHIRAM BROS. BOMBAY

Vs.

RESPONDENT:

THE COMMISSIONER OF INCOME TAX, BOMBAY CITY 1, BOMBAY

DATE OF JUDGMENT:

12/02/1969

BENCH:

GROVER, A.N.

BENCH:

GROVER, A.N.

SHAH, J.C.

RAMASWAMI, V.

CITATION:

1969 AIR 859

1969 SCR (3) 669

1969 SCC (1) 659

ACT:

Income-tax-Person entering into contract for purchase of goods--Thereafter transferring benefit of contract for consideration-Whether consideration received was capital receipt or revenue.

HEADNOTE:

The appellant entered into a contract for the purchase of a large quantity of parachutes from the T. Company. The agreed purchase price was over Rs. 93 lacs and the assessee was required to deposit a sum of Rs. 10 lacs by way of earnest money. As he did not have enough funds, he entered into an arrangement with certain other persons whereby the amount of Rs. 10 lacs was to be deposited by them and they were to receive a "net profit share of 9 annas in a rupee". The financiers later withdrew from the arrangement and the benefit of the contract for the purchase of parachutes was transferred to a firm for a sum of Rs. 3 lacs on November 30, 1946. A few days later another partnership took over the contract of purchase. The Income-tax Officer reopened the appellant's assessment for the assessment year 1947-48 on the ground that the income of Rs. 3 lacs had escaped assessment. After the appellant had failed in an appeal to the Appellate Assistant Commissioner, the Tribunal found that the appellant had in fact only received a sum of Rs. 1,87,000/- and rejected his contention that this amount was in the nature of a premium for giving up his right to do business in parachutes and was, therefore in the nature of a capital receipt and not revenue. It held that the assessee had received profit in respect of a venture in the nature of trade. The High Court, upon a reference, upheld the view taken by the Tribunal.

In appeal to this Court it was contended on behalf of the appellant that the agreement which he had entered into with the T. Company was a capital asset or a source of possible income and the transfer which was made, was not of the goods which were to be acquired under the contract but the source itself, namely the appellant's share, right, title and interest was transferred and furthermore the amount in question was received by the appellant for relinquishing his

right to participate in the partnership which had been formed and from which he withdrew. It could not, therefore, partake of the character of a revenue receipt.

HELD : Dismissing the appeal,

The Tribunal had rightly held that the appellant intended "to do and did a venture in the nature of trade". When the appellant agreed to accept a sum of Rs. 1,87,000/- in consideration for transferring the benefits of the contract, he could well be said to have concluded a deal which represented the profit which he anticipated by acquiring the parachutes.

The High Court had rightly found that the arrangement made by the appellant with certain parties to finance the transaction in return for a share of 9 annas in a 'rupee, was one which had been made between a person in need of money and certain financiers and that no partnership had come into force. Accordingly there could be no question of the appellant having relinquished a share in the partnership. [673 C]

L10Sup./69-8

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 681 of 1968. Appeal by special leave from the judgment and order dated September 29, 1961 of the Bombay High Court in Income-tax Reference No. 46 of 1969.

I. N. Shroff, for the appellant.

S. K. Mitra, S. A. L. Narayan Rao and B. D. Sharma, for the respondent.

The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Bombay High Court answering the following question referred to it by the Income Tax Appellate Tribunal in the affirmative and against the assessee :

"Whether on the facts and circumstances of the case the receipt of Rs. 1,87,000 in the hands of the assessee is a revenue receipt and liable to income-tax ?"

The assessee used to carry on his business under the name and style of Milkhiram Bros. He was being assessed from the year 1945-46 onwards. On October 31, 1946 he secured a contract for the purchase of approximately 1,28,499 parachutes from Tata Aircraft Ltd. The parachutes belonged to the Government of India and the Tata Aircrafts Ltd. was acting as the agent of the Government. The agreed purchase price of the parachutes was approximately Rs. 931 lakhs. The contract was entered into by means of letters. The assessee addressed a letter, dated October 29, 1946 to Tata Aircraft Ltd. containing an offer. Tata Aircraft Ltd. sent a reply, dated November 1, 1946, confirming the sale on the terms and conditions given in that letter. The assessee had to make a deposit by way of earnest money of a sum of Rs. 10 lakhs. The assessee did not have enough funds with him. He entered into an arrangement with M/s. Nathmal Nihalchand, Pokhraj Hirachand and Harilal Hargovandas for financing the business. The details of this arrangement were contained in a letter, dated October 31, 1946. The amount of Rs. 10 lakhs was to be deposited by the latter who were to receive a "net profit share of 9 As. in a rupee". The assessee later on arranged on November 30, 1946 with the financiers to withdraw from the old arrangement recorded in the letter, dated October 31, 1946. The benefits if the

contract of purchase of parachute were transferred to the firm styled as Pokhraj Hirachand for a sum of Rs. 3,00,000 on November 13, 1946. On November 14, 1946 the parties approached Tata Aircraft Ltd. who agreed to accept M/s. Pokhraj Hirachand as purchasers of parachutes on the terms and conditions originally agreed to between the assessee and that company.

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On November 22, 1946 an agreement of partnership was entered into between six persons, namely, Nathmal, Pokhraj, Chandumal, Prithviraj, Shapoorji & Co. Ltd. and Jamalbhai. This partnership took over the contract of purchase entered into by Pokhraj Hirachand. It was registered by the Income tax authorities for the assessment year 1948-49.

M/s. Pokhraj Hirachand in their assessment claimed a deduction of Rs. 3,00,000 being the payment made to the assessee under the arrangement mentioned above. The Income tax authorities disallowed the claim on the ground that it was a capital payment. The aforesaid firm appealed to the Tribunal which held that only a payment of Rs. 1,87,000 had been proved to have been made to the assessee. For the assessment year 1947-48 the Income Tax Officer reopened the assessment of the assessee under S. 34 of the Income Tax Act, hereinafter called the "Act" on the ground that the income of Rs. 3,00,000 had escaped assessment. The assessee contended that only a sum of Rs. 1,87,000 had been received by him and not Rs. 3,00,000. The Tribunal decided that point in his favour in appeal after he had failed before the Appellate Assistant Commissioner. The assessee's contention before the Tribunal was that the nature of the receipt of Rs. 1,87,000 was capital and not revenue. According to him the amount received was in the nature of a premium for giving up his right to do business in parachutes. The Tribunal did not accede to his contention and- held that the assessee had received profit in respect of a venture in the nature of trade. Thereupon the assessee moved the Tribunal and the question of law was referred.

The High Court entertained no doubt on the facts which had been found that the receipt of Rs. 1,87,000 was a trading receipt. This was so because the assessee was a businessman dealing in articles including parachute silk. In the opinion of the High Court the contract which he entered into with Tata Aircraft Ltd. was a contract for the purchase of stock-in-trade for the business which he was carrying on. It was argued before the High Court that the amount in question had been received for relinquishing his right to participation in the profits of the partnership from which the assessee withdrew. According to the High Court such an argument had not been presented before the Appellate Tribunal. The letters which were exchanged between the concerned parties were also considered and the conclusion at which the High Court arrived was that the benefit of the contract which the assessee had entered into with M/s. Tata Aircraft Ltd. had been transferred by him in favour of Messrs. Pokhraj Hirachand for a consideration of Rs. 3,00,000 out of which a sum of Rs. 1,87,000 only had been found to have been actually received by the assessee. That sum, therefore represented a receipt for transferring the

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benefits of the contract entered into by the assessee in the ordinary course of the business.

On behalf of the assessee who is the appellant before us it is submitted that the sum of Rs. 1,87,000 received by him could not be regarded as income. The agreement which had been entered into by the appellant with M/s. Tata Aircraft

Ltd. was a capital asset or a source of possible income and the transfer which was made was not of the goods which were to be acquired under the contract but the source of income itself, namely, the appellant's share, right, title and interest was transferred. The second contention which was also raised before the High Court is that the amount in question were received by the appellant for relinquishing his right to participate in the partnership which had been formed and from which he withdrew. It could not therefore partake of the character of a revenue receipt.

It appears that before the Tribunal only the first contention was raised. The Tribunal found as a fact that it was the appellant who had entered into a contract with M/s. Tata Aircraft Ltd. for the purchase of parachutes for a fixed sum. He intended "to do and did a venture in the nature of trade". The Tribunal took into consideration the well-known normal method of doing supply business in our country. According to it, highly influential parties instead of doing the business themselves manage to secure contracts and pass on the actual execution of the business to others in return for a fixed sum of money. This is what the appellant did and the income which he received was liable to income tax. It is difficult to see how on these findings the appellant could legitimately argue that the amount of Rs. 1,87,000 was a capital receipt. It is true that by means of the letter, dated October 31, 1946 M/s. Nathumal Nihalchand, Pokhraj Hirachand etc. were given 9 As. share in a rupee in the transaction and a partnership agreement was purported to have been entered into. But this letter mere embodied an arrangement for financing a business venture into which the appellant had entered. He did not have the funds and a deposit of Rs. 10 lakhs had to be made immediately. M/s. Nathumar Nihalchand, Pokhraj Huachand and others agreed to pay that amount to M/s. Tata Aircraft Ltd. It must be remembered that it was the appellant who had entered into the contract with M/s Tata Aircraft Ltd. in respect of the purchase of parachutes. When he agreed to accept a sum of Rs. 1,87,000 from the aforesaid persons as consideration for transferring the benefits of the contract the appellant can well be said to have concluded a deal which represented the profit which he anticipated by acquiring the parachutes.

It has been submitted on behalf of the appellant that he was not carrying on the business of transferring or selling the benefits

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of contracts and therefore the contract entered into with M/s. Tata Aircraft Ltd. could not be regarded as a part of his stock-in-trade. It would seem that the Tribunal proceeded more on the footing that the contract relating to the parachutes was a venture in the nature of trade than on the basis that it constituted stock-in-trade of the appellant. It is, therefore, unnecessary to examine this aspect of the matter.

It seems to us that the second contention of the appellant ought not to have been entertained by the High Court. It was not raised before the Tribunal. At any rate, the High Court examined it fully and came to the conclusion that the arrangement contained in the letter, dated October 31, 1946 was one which had been made between a person in need of money and certain financiers and that no partnership had come into existence. In that view of the matter there could be no question of the appellant having relinquished a share in the partnership.

We would accordingly hold that the answer returned by the

High Court was correct. The appeal fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed.

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JUDIS