

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 19 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

J V PATEL PRO. OF ASAIN CHEMICAL & CO.

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE A.R.DAVE

Date of decision: 31/08/2000

ORAL JUDGEMENT

The following two questions of law have been referred under Section 256(1) of the Income Tax Act for being answered by us:-

"1. Whether, on the facts and in the

circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that until the registered deed of sale is executed, in a hire purchase scheme, even though the purchaser may have been put into possession with all the owner of the flat and the annual letting value cannot be added in the income of the assessee?

2. Whether, the Tribunal is right in holding

on the facts in the circumstances of the case that the assessee in the present case could not be said to be the substantial owner of the flat just because the instalments in respect of the price of the flat remained to be paid?"

2. The reference has been made at the instance of the Department. Despite notice no one appears for the assessee. After hearing the Learned Counsel appearing for the department, we have also heard Ld. Counsel Shri Soparkar who agreed to appear as Amicus Curiae. The decision of the Supreme Court in Commissioner of Income Tax Vs. Podar Cement Pvt.Ltd and Others reported in 1997 226 ITR 625 has been brought to our notice. We find that the 2 questions referred are squarely covered by the following observations of the Supreme Court in the case of Commissioner of Income Tax Vs. Podar Cement Pvt.Ltd.:-

"Assuming that there are two possible interpretations on section 22 of the 1961 Act, which is akin to a charging section, it is well settled that the one which is favourable to the assessee has to be preferred.

This view is strengthened/supported by the subsequent amendment to section 27 of the 1961 Act. The said amendment was introduced to section 27 of the 1961 Act by the Finance Act, 1987, by substituting clauses (iii), (iiia) and (iiib) in place of the old clause (iii) with effect from April 1, 1988.

The presumption against retrospective operation is not applicable to declaratory statutes. A declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual

reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended.

From the memorandum explaining the Finance Bill, 1987, it is clear that the amendment to section 27 of the 1961 Act was intended to supply the obvious omission or to clear up doubts as to the meaning of the word "owner" in section 22. The amendment introduced by the Finance Bill, 1987 was declaratory/clarificatory in nature so far as it related to section 27(iii), (iiia) and (iiib). Consequently, these provisions are retrospective in operation.

Hence, though under the common law "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act, etc. in the context of section 22 of the Income-tax Act, 1961, having regard to the ground realities and further having regard to the object of the Income-tax Act, namely, to tax the income, "owner" is a person who is entitled to receive income from the property in his own right. The requirement of registration of the sale deed in the context of section 22 is not warranted."

3. The questions are therefore answered against the assessee and in favour of the department. The reference stands disposed of with no order as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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