

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
S.MUTHYAM REDDY

DATE OF JUDGMENT: 01/10/1999

BENCH:
S.R.Bubu, R.C.Lahoti

JUDGMENT:

RAJENDRA BABU, J. :

This appeal is by special leave against an order passed by the High Court of Andhra Pradesh in a batch of cases. By that order, the High Court considered the effect of a combined reading of Sections 2(1A) and 2(14) of the Income Tax Act, 1961 [hereinafter referred to as the Act] and has held that (i) capital gains arising from sale of land used for agricultural purposes would be revenue derived from such land and, therefore, agricultural income within the definition under Section 2(1A) of the Act with the result that Parliament would have no legislative competence to tax such agricultural income; and (ii) amended Section 2(14)(iii) should be read down to preserve its constitutionality. All land used for agricultural purposes whether situated in areas mentioned in Section 2(14)(iii)(a) and (b) should be held to be excluded from the definition of capital asset. Thus Section 2(14)(iii) should read as excluding from capital asset agricultural land in India, not being land situated in the areas mentioned therein. Upon such interpretation, Section 2(14)(iii) does not enable levy of tax on capital gains arising from transfer of land which is used for agricultural purposes wherever it may be situated.

In this appeal, challenge to this order is based on many grounds and our attention has been drawn to several decisions not only taking similar but also a contrary view. The respondents having remained ex-parte, we requested Shri Dhruv Mehta, learned Advocate, to assist the Court as amicus curiae. We are beholden for the valuable assistance rendered by him to the Court.

By Finance Act, 1989, Explanation to Section 2(1A) is inserted with effect from 1.4.1970 to supersede the view expressed in the order under appeal and several decisions setting out similar ratio. This declaratory amendment having retrospective operation though coming into force during the pendency of this appeal must be given effect to. The said Explanation clearly declares that the revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in Section 2(14)(iii)(a) or (b). The upshot of the same is that income derived from sale of

such agricultural lands cannot be treated as agricultural income. Thus, the whole basis of the decision has been lost and, therefore, the order under appeal cannot be sustained and deserves to be set aside.

Shri Dhruv Mehta pointed out that by an artificial definition introduced into the Act what is agricultural income cannot be treated otherwise. He also sought to explain the scheme of the entries in the different Lists of the Constitution in support of his contention.

The learned counsel for the appellants pointed out that under Article 366(1) of the Constitution agricultural income has the same meaning as defined under enactments relating to income tax. There is divergence of opinion amongst the High Courts as to the effect of Section 2(14)(iii) of the Act, as amended by Finance Act, 1970, and hence the Parliament introduced the Explanation by Finance Act, 1989 stating the meaning thereto which is in conformity with the view expressed by some High Courts. He submitted, therefore, doubts arising as to interpretation by reason of conflict of decisions of the High Courts is resolved by law and such a provision cannot be invalid.

Inasmuch as there is no challenge to the validity of the Explanation to Section 2(1A) inserted into the Act by Finance Act, 1989, we are afraid, we cannot examine the correctness of the said submission. We leave open this question to be raised for consideration in an appropriate proceeding.

In the result, we allow this appeal and set aside the order of the High Court. No order as to costs.