COMMISSIONER OF INCOME TAX vs. T.N. ARAVINDA REDDY

SUPREME COURT OF INDIA

V.R. Krishna Iyer & D.A. Desai, JJ. Special Leave Petition (Civil) No. 1557 of 1979 Decided on 5th October, 1979 TC22R.251 SOURCE : (1979) 12 CTR (SC) 423 : (1979) 120 ITR 46 (SC) : (1979) 2 TAXMAN 541

Section 54(1),

Asst. Year –

Decision in favour of Assessee

Counsel appeared

Soli J. Sorabji with Miss A. Subhashini, for the Revenue : S.T. Desai with K.J. John & Mrs. A.K. Verma, for the Assessee

V.R. KRISHNA IYER, J.:

We regard the single point, persuasively presented by the learned Solicitor-General on behalf of the petitioner (The CIT, Andhra Pradesh), as deserving of a speaking order, although in dissent, since the question may arise again and needs to be silenced.

2. Briefly, the facts. Four brothers, members of a coparcenary, partitioned their family properties, leaving in common a large house in the occupation of their mother. The eldest, who is the respondent before us, sold his own house at a price sufficient to attract handsome capital gains tax, but he pre-empted the demand for tax by acquiring the common house from his three brothers who executed three release deeds for a consideration of Rs. 30,000 each, adjusted towards the extra share (Jeshtabhaga) agreed to be given to the eldest by the next three. It is common ground that if these release deeds did amount to purchase of the house, s. 54(1) of the IT Act, 1961, would save the respondent from eligibility to tax. So the short question, neatly identified by the learned Solicitor-General, is whether release deeds by sharers in favour of one of them whereby the joint ownership of all became separate ownership of one amount to purchase of house property within the meaning of s. 54(1) of the Act. The High Court has held it is and we concur. Undoubtedly, each release, in these circumstances, is a transfer of the releasor's share for consideration to the releasee. In plain English, the transferee purchases the share of each of his brothers. It is for a price of Rs. 30,000 each. Had this been taken from non-fraternal owners of shares or from one stranger-owner, plain-spoken people would have called it a purchase. Why, then, should legalese be allowed to play this linguistic distortion. The reason, supposedly supported by an English decision, is that purchase primarily means acquisition for money paid, not adjusted. Upjohn J., in Bobshaw Brothers Ltd. vs. Mayer (1956) 3 All ER 833, 835 has circumspectly said : "There are no doubt to be found authorities and statutes which have extended that meaning. In Mr. T. Cyprian Williams' book, the Contract of Sale of Land, at p. 3, he says: ‘ "Sale", in the strict and primary sense of the word, means an agreement for the conveyance of property for a price in money; but the word "sale" may be used in law in a wider sense and so applied to the conveyance of land for a price consisting wholly or partly of money's worth other than the conveyance of some other land.' Apparently he considered that a sale for something other than money can in a wider sense be properly described as a sale."
We agree. The signification of a word of plural semantic shades may, in a given text, depend on the pressure of the context or other indicia. Absent such compelling mutation of sense, the speech of the lay is also the language of the law.

3. We find no reason to divorce the ordinary meaning of the word "purchase" as buying for a price or equivalent of price by payment in kind or adjustment towards an old debt or for other monetary consideration from the legal meaning of that word in s. 54(1). If you sell your house and make a profit, pay Caesar what is due to him. But if you buy or build another, subject to the conditions of s. 54(1), you are exempt. The purpose is plain; the symmetry is simple, the language is plain. Why mutilate the meaning by lexical legalism. We see no stress in the section on

"cash and carry". The point pressed must, therefore, be negatived. We have declined to hear Sri S. T. Desai's artillery fire although he was armed cap a pie with Mitakshara lore and law. A point of suffocating scholarship sometimes arrives in Court when one nostalgically remembers the escapist verse : "Where ignorance is bliss, ‘Tis folly to be wise." Amen!

A passing reference to avoidance and evasion of tax was made at the bar, a dubious refinement of a dated legal culture sanctified, though, by judicial dicta. The Court is not the mint of virtue and one day in our Welfare State geared to social justice, this clever concept of ‘avoidance' against ‘evasion' may have to be exposed. Enough unto the day is the evil thereof.