



## Whether a single transaction of purchase and sell of land can be treated as adventure in the nature of trade?

### Issue:

Mr. X purchased land for the purpose of construction of Garage in his business of Motor Car Service and Repairing in the year 2001. However due to stiff competition Mr. X gave up the idea of constructing garage and sold the land in 2011. The AO is of the view that this is nothing but adventure in the nature of trade and accordingly surplus has to be treated as Business Income.

### Proposition:

When the Land is purchased with the purpose of using the same for business, but due to some reason the same is not used as such and has been sold, the same cannot be treated as adventure in the nature of trade and taxed as business income. It is proposed that single transaction of purchase and sale of land has to be taxed as capital gains.

### View Against the proposition:

Section 2(13) of the Income Tax Act, 1961 states definition of business as under:

“Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.”

The term “Adventure in the nature of trade” has not been defined in the Income Tax Act, 1961. As far as the dictionary meaning of the word ‘adventure’ is concerned, it implies a pecuniary risk, a venture, a commercial purposes. The word ‘venture’ is defined as a commercial activity in which there is a risk of loss as well as a chance of gain. The term ‘trade’ in the context of the definition

of the expression ‘business’ is a wider concept and once this term associated with the term ‘adventure’ the scope further enlarged. The adventure in the nature of trade is allowed to transaction that constitutes a trade or business but may not be a business itself. The business has to be characterized by some of essential ventures such as repetitive transactions, holding of stock-in-trade, dealing with the customers and implied intention between the parties, etc., But, contrary to this even an isolated transaction can satisfy the description of an adventure in the nature of trade. For an adventure, it is not necessary that there should be a series of transactions, i.e., both of purchase and of sales. A single transaction or purchase and sale may be outside the assessee’s line of business, can constitute an adventure in the nature of trade. Therefore, neither repetitive nor continuity of similar transaction is necessary to constitute a transaction then it is nothing but carrying on a business and in such situation, the question of adventure in the nature of trade can hardly arise. To supplement as also to further elaborate this discussion, it can be added that the word ‘adventure’ may be in the realms of travel, voyage, hunting etc., but it is attached with other words, i.e. adventure in the nature of trade, then the move adventure is attached with motive of trade.

¶ In ‘G. Venkataswami Naidu & Co. V. Commissioner of Income-tax’ – 1958 – TMI-49633 – (Supreme Court) the appellant contended that four purchases made by the appellant represent nothing more than an investment and if by resale some profit was realized that cannot impress the transaction with the character of an adventure in the nature of trade. The Supreme Court observed that the appellant, however, is a firm and it was not a

part of its ordinary business to make investment in lands. Besides, when the first purchase was made it is difficult to treat it as a matter of investment. The property was a small piece of 280.25 cents and it could yield no return whatever to the purchaser, It is clear that this purchase was the first step taken by the appellant in execution of well-considered plan to acquire open plots near the mills and the whole basis for the plan was to sell the said lands to the mills at a profit. Just as the conduct of the purchaser subsequent to the purchase of a commodity in improving or converting it so as to make it more readily resalable is a relevant factor in determining the character of the transaction, so would his conduct prior to the purchase be relevant if it shows a design and a purpose. As and when plots adjoining the mills were available for sale, the appellant carried out his plan and consolidated his holding of the said plots.

The appellant is the managing agent of the Janardana Mills and probably it was first thought that purchasing the plots in its own name and selling them to the mills may invite criticism and so the first purchase was made by the appellant in the name of its benamidar V.G. Raja. Later the appellant changed its mind and took the subsequent sale deeds in its own name. The conduct of the appellant in regard to these subsequent to their purchase clearly shows that it was not interested in obtaining any return from them. No doubt the appellant sought to explain its purpose on the ground that it wanted to build tenements for the employees of the mills; but it had taken no steps in that behalf for the whole of the period during which the plots remained in its possession. Besides, it would not be easy to assume in the case of a firm like the appellant that the acquisition of the open plots could involve any pride of possession to the purchaser. It is really not one transaction of purchase and resale. It is a series of four transactions undertaken by

the appellant in pursuance of a scheme and it was after the appellant had consolidated its holding that at a convenient time it sold the lands to the Janardana Mills in two lots, When the Tribunal found that, as the managing agent of the mills, the appellant was in a position to influence the mills to purchase its properties its view cannot be challenged as unreasonable. If the property had been purchased by the appellant as a matter of investment the appellant did neither and just allowed the property to remain unutilized except for the net rent of Rs.80 per annum which is received from the house on one of the plots. The reason given by the appellant for the purchase of the properties by the mills has been rejected by the Tribunal and so when the mills purchased the properties it is not shown that the sale was occasioned by any special necessity at the time. In the circumstances of the case the tribunal was obviously right in inferring that the appellant knew that it would be able to sell the lands to the mills whenever it thought it profitable so to do. Thus the appellant purchased the four plots during two years with the sole intention to sell them to the mills at a profit and this intention raises a strong presumption in favour of the view taken by the Tribunal. In regard to the other relevant facts and circumstances in the case, none of them offsets or rebuts the presumption arising from the initial intention' on the other hand, most of them corroborate the said presumption. The Supreme Court, therefore, held that the High Court was right in taking the view that, on the facts and circumstances proved in this case, the transaction in question is an adventure in the nature of trade.

- II] In 'Deputy Commissioner of Income tax V. Gopal Ramnarayan Kasat' – 2009 – TMI – 78705 – (Bombay High Court) the assessee were brothers. The assessee alongwith one Shri Narayan Ramdayal Lathi, who was advocate by profession, purchased certain

agricultural lands during the period 1992 to 1998. The lands were acquired immediately thereafter by the State Government. The assessee received compensation/ enhanced compensation towards the acquisition of lands during the assessment years 2000-01, 2001-02 and 2002-03. The assessee had filed their returns for those years. The assessment was reopened under Sec.147 of the Income Tax Act, 1961. The Assessing Officer came to the conclusion that the material placed on record indicated that the assessee did not have any intention to hold the lands and cultivate it. He, therefore, concluded that the surplus received by the assessee was liable to be taxed as business income terming the transaction 'Adventure in the nature of trade' as defined under the provisions of Sec. 2(13). The High Court held that from the material placed on record, on the basis of which the three authorities had concurrently held that the transactions were 'adventure in the nature of trade', it could clearly be inferred that the assessee was involved in a series of transaction of purchasing lands which were notified or likely to be notified for acquisition by the Government. The transactions were not only pertaining to the Jalgaon District but also Aurangabad District, which there was no perversity in the finding of the fact recorded by the Assessing Officer and confirmed by the Commissioner (Appeals) and the Tribunal that the transactions were 'adventure in the nature of trade' and the gains therefore were chargeable to tax under the head 'Profits and gains of business/profession'.

#### **View in Favour of the Proposition :**

It is submitted that a single transaction of purchase and sale of land cannot be treated as an adventure in the nature of trade. Let me refer to following authorities:

#### **CIT v. Jashbhai Trikambhai & Gordhandas Trikambhai**

When a transaction was not in the line of business of the assessee but an isolated one, the onus was on the department to prove that the transaction was an adventure in the nature of trade. In deciding the character of a transaction, several factors were to be considered e.g., whether the purchaser was a trader, nature and quantity of commodity purchased and sold, whether it was allied to its line of business, acts prior and subsequent to purchase showing a design or purpose, whether the commodity was made a part of the stock-in-trade of the business, the repetition of the transactions, etc. A mere profit motive would not however by itself be a decisive factor to stamp the transaction with the character of an adventure in the nature of trade.

The facts of the case clearly indicated that the assessee's purchased agricultural lands for industrial use and, when these could not be so used, sold a portion thereof in 1967 at the same rate as prevalent in 1964 and kept the remaining portion themselves. Looking at the totality of the circumstances, the transaction could not be said to be an adventure in the nature of trade.

#### **CIT v. Premji Gopalbhai**

The burden of proving that the particular transaction was an adventure in the nature of trade is on the revenue. Of course, that burden can be discharged by pointing to circumstances which lead to the conclusion that the transaction is an adventure in the nature of trade. However, even if land which is not a commercial commodity is purchased and it can be shown that the purchase of the land was made solely and exclusively with an intention to resell it at a profit, it would be a strong factor that the transaction would be an adventure in the nature of trade.

In the instant case no such strong factor emerged from the facts of the case. It was not possible to hold that the assessee was a dealer in land or was treating land as his stock-in-trade. When the assessee

sold different plots in the past, the profit realized by the assessee from those sales were treated as capital gains. It was strongly urged before the Tribunal that even the sales out of the original holdings subsequent to the sales in question in 1968 and 1969 had been treated as realization of capital asset resulting in capital gains and, hence, it was obvious that unlike Virani in *D. S. Virani's case* [1973] 90 ITR 255 (Guj.) this particular assessee was not a dealer in land. That was a strong circumstance in his favor and even in respect of subsequent sales he was not treated as a dealer in land.

In any event, the revenue had not discharged the burden of establishing that the repurchase and sale of these two plots was an adventure in the nature of trade; it could not be said in view of the totality of the circumstances of the case that this was sole intention of the assessee at the time when he repurchased the land in 1964 to sell the two plots at a profit.

Under these circumstances, the conclusion reached by the Tribunal that the amount should be treated as capital gains and assessed as such and not as business profits, was correct.

### **Supreme Court of India, Saroj Kumar Mazumdar v. CIT**

It has also not been disputed that in a case where a transaction under examination is not in the line of the business of the assessee, and is an isolated or a single instance of a transaction like that, the burden lies on the Revenue to bring the case within the words of the statute, namely, that it was an adventure in the nature of trade.

Though the appellant was engaged in various types of business as a shareholder or a director in limited liability concerns, as also in building contracts, dealing in landed estates is not in the line of his business. If such a transaction were in the line of his business, it would not matter much whether, in the assessment year, he had several such transactions or only one. Even a single transaction of dealing in

landed estates, being a part of his business, would be liable to income-tax, if a profit is made in that transaction. But, admittedly, the transaction in question in question was the only one of its kind, out of which the appellant had made a considerable profit which appeared to have been in the nature of a windfall. When he entered into the agreement with the society for the purchase of the plot, in January, 1946, he had expected that at the end of the World War, the Government would release the property from its requisition, and that the society would be develop the land by laying the necessary roads and providing other amenities to the plot-holders. But as the Government did not release the property, and as the appellant was a businessman, who was interested in return from his capital, and as he had already paid advance towards the purchase price, and as in 1947, at the end of the Second World War, his business in contracts for building constructions began to decline, he naturally, thought of making the best of bargain. If he did not get out of the transaction, his financial difficulties in meeting his further liabilities under the agreement, as a result of slump in his main line of business, might lead to the forfeiture of the advance odd, he would naturally be on the look out for a good purchaser. He was lucky to find a lady with a lot of money to spare, who had, as he alleged taken a fancy to the plot in question. Thus, he could assign to her the benefit of his agreement with the society on terms which were highly profitable to him. There was no clear evidence in support of the inference of the Tribunal that the land was purchased with the sole intention of selling it later at a profit. The Tribunal considered two alternatives in relation to this transaction – one, that the land was purchased in order to build a residential house, and the second, that it was purchased in the hope of selling it later for a profit. The first alternative, the Tribunal rejected on the ground that “he did not seem to have very much of means at his disposal.” That itself was a statement which did not bear close scrutiny. During the two years previous to the year under assessment, the appellant had been addressed to income-tax on

Rs.53,000 and Rs.59,000. That did not lend countenance to the surmise that the appellant was not a man of means. Admittedly, he held marketable shares of the value of about 2 ½ lakhs of rupees, though all those shares standing in his name were not claimed by him as his own. Apparently, he was carrying on a lucrative business during the immediately preceding years.

It was true that in the year of assessment on his own showing in his income-tax return, he had suffered a loss, but that may have been a turning point in his fortunes, and that would not necessarily lead to the inference that he was not in a sound financial position on the date of the agreement with the society. It might be that his hopes of nourishing in his business in the years to come were not realized after the conclusion of the Second World War. But even assuming that the Tribunal was right in its conclusion as to the second alternative, namely, that the purchase was made in the hope of making a profit after re-sale, the matter was not concluded.

The appellant was carrying on an engineering concern, and it was not, therefore, unlikely that he might have intended, as he alleged, to put up a small workshop on a portion of the land to be acquired, and to build his own residential house on the other portion. It was not suggested that the appellant had his own house in Calcutta, and was, therefore, not in need of a building site. At the time he entered into the agreement of purchase with the Society, he was doing good business, as was shown by the large amounts on which he was assessed to income-tax. It was unnatural for him to look forward to continue his business in as prosperous a way as he had been doing in the recent past, and thus, to raise sufficient funds to build his own residential house, or to construct a workshop for his own engineering business.

Hence, the possibility or the probability that the site may appreciate in value, would not necessarily lend itself to the inference that the transaction was a venture in the nature of trade, as distinguished from a capital investment. In all the circumstances of the

instant case, the total impression created was that it had not been made out by the Department that the dominant intention of the appellant was to embark on a venture in the nature of trade, when he entered into the agreement which resulted in the profits sought to be taxed.

### **Summation :**

The law is very well settled that if the intention of the purchase right from its inception is to resell, then only the transaction will be treated as adventure in the nature of trade, otherwise it has to be treated as capital gains. Let me now refer to some important decisions.

### **Onus is on department to prove that adventure is in the nature of trade:**

In a case where a transaction under examination is not in the line of the business of the assessee, and is an isolated or a single instance of a transaction, the burden lies on the revenue to bring the case within the words of the statute, namely, that it was an adventure in the nature of trade- **Saroj Kumar Mazumdar v. CIT [1959] 37 ITR 242 (SC).**

The revenue has not only to establish that the transaction is an adventure but it has to go further and establish that it is in the nature of trade – **Kali Nath v. CIT [1973] 88 ITR 347 (All.).**

The revenue should establish by positive that the purchase and sale of the property by the assessee is with a view to earn profits through trading transactions. In order to hold that an activity is in the nature of an adventure, there must be positive materials to prove that the assessee intended to trade in such an activity and, the absence of evidence the sale of immovable property consisting of land can give rise only to capital accretions. The normal inference to be drawn in cases of purchase of land is that it is intended to be an investment, whether it yields income or not – **CIT v. A. Mohammed Mohideen [1989] 42 Taxman 1/176 ITR 393 (MAD.)**

## In the Nature of Trade

### Elements investing legal character of trade or business must be present:

The expression ‘In the nature of trade’ appearing in the definition of ‘business’ postulates the existence of certain elements in the adventure which in law would invest it with the character of trade or business – **G. Venkataswami Naidu & Co. v. CIT [1959] 35 ITR 594 (SC) Kali Nath v. CIT [1973] 88 ITR 347 (All.)/ ch. Atchiaiah v. CIT [1985] 156 ITR 78 (AP).**

### Some, but not all characteristics of trade / business must be present:

Reference to an adventure in the nature of trade, suggests that the transaction in question cannot properly be regarded as trade or business. It is allied to a transaction that constitutes trade or business but may not be trade or business itself. It is characterized by some of the essential features that make up a trade or business but not all of them – **Bhagirath Prasad Bilgaiya v. CIT [1983] 139 ITR 916 (MP).**

### Dominant intention of assessee is relevant:

To determine the nature of the transaction the dominant intention of the assessee has to be seen. If the intention is to embark on a venture in the nature of trade as distinguished from a capital investment it would make no difference even if the transaction is a single and isolated one - **R. Dalmia v. CIT [1982] 137 ITR 665 (Delhi).**

### Different considerations, like objects, will apply to incorporated companies:

The considerations which apply in the case of individuals in the matter of determining whether the activities constitute a ‘business’ within the meaning of the inclusive definition, may not apply in the case of incorporated company. Even though the activities if carried on by individuals might constitute business in that sense, they might not constitute such business when carried on by

incorporated companies and resort must be had to the general position in law in order to determine whether the incorporated company was carrying on business so as to constitute the income earned by it, income, profits or gains from business. When a company is incorporated for carrying out certain activities, it would be relevant to enquire what are the objects for which it has been incorporated – **Lakshminarayan Ram Gopal & Son Ltd. v. Govt. of Hyderabad [1954] 25 ITR 449 (SC).**

### Solitary transaction outside normal line of business need not necessarily be a business venture:

A solitary transaction of purchase of land by the assessee-firm, doing business of jewelers, for purposes of building houses for partners and its sale six years later due to unhealthy conditions of the locality, could not constitute an adventure in the nature of trade, especially when land is not ordinarily a commercial commodity. The mere fact that some profit was made in the transaction would not, without anything more, indicate that the intention of the firm was to trade in landed property, and indeed there was nothing more to indicate the same – **CIT v. Anandlalal Becharlal & Co. [1977] 107 ITR 677 (Bom.)**

When the assessee is not in the real estate business Purchase and Sale of land cannot be considered as adventure in the nature of trade – **CIT v. P.K.N.Co. Ltd. 60 ITR 65 (SC).**

When agriculture land is converted into non-agriculture land and divided into plots, Profit on sale amounts to Capital Gain – **Jayraj Madeppa Kadadi v. CIT 186 ITR 161 (Bom.)**

Finally, it is submitted that solitary transaction of purchase and sale of land outside the line of business cannot be treated as adventure in the nature of trade.

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