
(2000) 12 MAD CK 0065

In the Madras High Court

Case No : Tax Case No. 455 of 1985 (Reference No. 293 of 1985)

Agnes Corera

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-12-2000

Acts Referred:

Income Tax Act, 1961 — Section 2(47), 41(2), 45

Citation : (2001) 249 ITR 317

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : R. Janakiraman, for the Appellant; O. Anandaraman, for the Respondent

Judgement

K. Gnanaprakasam, J.—Two questions have been referred to this court at the instance of the assessee which are :

(1) Whether, on the facts and in the circumstances of the case, the assessee is liable to capital gains tax in respect of the amount of Rs. 80,000

received from the insurance company on February 18, 1977, on the loss of Boat No. T. U. 87 ? and

(2) Whether the Tribunal was right in law in holding that there was a transfer within the meaning of Section 2(47) of the Act so as to attract the

provisions of Section 45 ?

2. The assessee was an individual who owned a boat which sank in the sea on August 25, 1976. As the boat was insured, the assessee made a

claim of Rs. 80,000 with the insurance company and the assessee also preferred a claim of Rs. 6,106 being the expenditure incurred towards the

salvaging expenses. Both the claims of the assessee were paid by the insurance company on February 18, 1977. The assessee has not offered any

profits u/s 41(2) of the Income Tax Act, 1961, or capital gains in respect of the boat which had been lost, on the ground, that the boat was lost

due to natural cause and there was no transfer to attract "capital gains" in terms of Section 45 of the Act. But the Income Tax Officer did not

accept the contention of the assessee. On appeal, the order of the assessing authority was confirmed and the contentions raised by the assessee

were not accepted. The assessee's appeal to the Tribunal was also rejected, and in the said circumstances, these questions are referred to us.

3. Learned counsel for the appellant has contended that the amount realised by the assessee from the insurer arose out of the sinking of the ship

and not as a consequence of transfer of capital goods, and that therefore, the capital gain will not at all arise in this case. He cited the judgment of

the apex court in the case of Vania Silk Mills (P) Ltd. Vs. Commissioner of Income Tax, Ahmedabad [OVERRULED], , to sustain his claim,

wherein, the apex court held, as set out in the headnote that,

. . . capital gains tax was attracted u/s 45 by transfer and not merely by extinguishment of rights howsoever brought about. Whatever the mode by

which the transfer was brought about, the existence of the asset during the process of transfer was a precondition : unless the asset existed in fact,

there could not be a transfer of it. The extinguishment of a right or rights should in any case be on account of it or their transfer in order to attract

the provisions of Section 45. If it was not, and was on account of the destruction or loss of the asset, it was not a transfer and did not attract the

provisions of Section 45 which related to transfer and not to mere extinguishment of a right. Hence, an extinguishment of right not brought about by

transfer was outside the purview of Section 45.

(ii) That in the case of damage, partial or complete, or destruction or loss of the property, there was no transfer of it in favour of a third party. The

money received under the insurance policy in such cases was by way of indemnity or compensation for the damage, loss or destruction of the

property. It was not in consideration of the transfer of the property or the transfer of any right in it in favour of the insurance company. It was by

virtue of the contract of insurance or of indemnity, and in terms of the conditions of the contract.

(iii) That the fact that while paying for the total loss of or damage to the property, the insurance company took over such property or whatever was

left of it, did not change the nature of the insurance claim which was indemnity or compensation for the loss. The payment by the insurance

company was not in consideration of the property taken over by the insurance company.

(iv) That it was not necessary to inquire whether the amount received by the appellant was spent in replacement of the machinery or not.

(v) That, therefore, the difference of Rs. 3,50,792 was not capital gains and, was not chargeable to tax u/s 45.

4. As the principles laid down by the apex court are squarely applicable to the case on hand, we also hold that the Tribunal was not correct in

calling upon the assessee to pay tax on capital gains and, therefore, we answer the issues in favour of the assessee and against the Revenue.