
(1982) 10 MAD CK 0013

In the Madras High Court

Case No : Tax Case No's. 1227 to 1229 of 1977

Baldevji

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-10-1982

Acts Referred:

Income Tax Act, 1961 — Section 155(5), 2(14), 2(17), 2(31), 2(47)

Citation : (1985) 156 ITR 776

Hon'ble Judges : V. Ratnam, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K.J. Rebello, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Balasubrahmanyam, J.—Under the scheme of the Income Tax Act, 1961, development rebate like depreciation allowance in respect of plant

and machinery is a capital allowance granted to a taxpayer in the computation of annual profits and gains under the head ""Business"". Unlike

depreciation allowance, however, development rebate is an ""once and for all"" allowance in the year of installation of the plant and machinery. The

statute lays down certain conditions for the grant of development allowance. The first condition obviously is that the assessee must be the owner of

the machinery or plant in respect of which development rebate is to be granted. The other condition which can be gathered from the provisions of

the Act is that the assessee should continue to retain ownership of the machinery for at least eight years immediately following the year of

installation. The sanction for the latter condition is that if an assessee should part with the machinery in question within the statutory period, then he

forfeits the development rebate already granted. The procedure by which the forfeiture is effectuated by the Act is to be found in section 155(5) of

the Act. The provision enables the Income Tax Officer to withdraw development rebate already granted to an assessee, if within the statutory

period, the assessee either sells or otherwise transfers the machinery which had obtained development rebate, as if the grant of the development

rebate, even in the first instance, is a palpable mistake in the assessment.

2. The only question in this reference before us is whether the assessee in this case has rendered himself liable to forfeiture of the development

rebate u/s 155(5) of the Act.

3. The assessee was the sole proprietor of a business. He purchased certain new items of machinery and installed them in his business. During the

relevant years of assessment, the Income Tax Officer granted development rebate on these items of machinery. Within eight years from their

installation, however, the assessee formed a partnership with himself and his son as partners and gave over the items of machinery as well as all

other assets of his sole proprietary business, as a going concern, to the newly constituted firm. The Income Tax Officer took the view that the

take-over by the partnership of the machinery which had obtained development rebate must be held to have been the subject of transfer by the

assessee, entailing the withdrawal of the development rebate u/s 155(5) of the Act. He accordingly took proceedings under that provision and

withdrew the development rebate already granted to the assessee.

4. The assessee objected to the application of section 155(5) to his case. He contended that no sale or transfer of the machinery was involved

when his proprietary business was converted into a partnership. This contention, however, was rejected both by the Income Tax Officer and, in

appeal, by the Income Tax Appellate Tribunal. The Tribunal took the view that in the events that happened, there was a transfer by the assessee of

the machinery in question to the partnership firm.

5. Mr. Rebello, learned counsel for the assessee, urged before us two contentions. He said, first, that there was no transfer of the machinery by the

assessee when the proprietary business was converted into a partnership concern. He next contended that even assuming that there was a

transfer"" section 155(5) could not be invoked since the transfer, such as it was, could not be regarded as having been effected in favour of a

person"". The suggestion was that the partnership firm of the assessee and his

son cannot be regarded as a "person". On the first part of the contention, the learned counsel described the process of the take-over of the machinery by the partnership concern from the assessee as a matter of mere "adjustment of the rights of partners inter se". A mere adjustment of right as between partners, he said, cannot be regarded as a transfer to the partnership firm. In one sense, it can be said that there is an adjustment, because after all, the formation of a partnership involves a mutual adjustment or agreement between persons who agree to become partners for carrying on a business in common and for sharing the profits therefrom. But there is no gainsaying the fact that when persons who become partners bring into the partnership firm their separate properties, what actually happens is a change in the ownership of every one of those properties. What was property of an individual a moment before the formation of the partnership becomes, by virtue of the terms of the partnership contract, the property of the partnership firm as such. Section 14 of the Partnership Act speaks of property originally "brought" into the stock of the firm by partners as forming part of the property of the firm. But the process of bringing separate properties of the partners into the joint stock of partnership assets itself involves a change of ownership. The expression "transfer" occurring in section 155(5) of the Act is not defined by Parliament. But that does not matter. In our judgment, the word is used in its widest import. In the normal acceptation of that term, a transfer indicates any process by which property changes hands from one owner to another. Wherever property passes in this manner or is parted with by one person in favour of another, there occurs a transfer of property. Property, when analysed, is a bundle of rights. Therefore, any interest in property is also regarded under the general law as property. It follows that the transfer of a mere fractional interest in property would also come within the concept of transfer of property. The Transfer of Property Act, 1882, which carries a definition of the expression "transfer", employs a fairly wide meaning for the expression. Section 5 of the Act regards as transfer any act by which anyone conveys property from himself to another from himself to himself, or from himself to himself and another. Having regard to these general attributes of the concept of "transfer of property", it cannot be said that no transfer of property at all would be involved

when assets, like the machinery in question in this case belonging to the assessee exclusively, became the property of a partnership on the formation of that firm.

6. The assessee's property becomes the property of the partnership by a process of adjustment as described by Mr. Rebello only if by that

description is meant a conversion or a change, in the title or ownership of the property. For it is not, and it cannot be, suggested that the assessee

as an individual property-owner, by some process of legal evolution, grew into a partnership, the ownership of the property all the while remaining

the same. Nor could it be said that by a process of natural growth recognised by the law of the property, a proprietor's property becomes the

property of a partnership. If, in the present case, what was the assessee's individual property become the property of the partnership, that could

only have been possible by the contractual process of the assessee and his son agreeing to become partners and taking over the proprietary

business as a going concern, inclusive of the machinery and all other assets of the firm.

7. Apart from the inherently wide connotation which the expression "transfer" bears practically in any legal discussion, there is also a further

indication in section 155(5) itself that Parliament intended the term "transfer" to be understood in the widest sense possible. This is seen from the

collocation of the expression "sold or otherwise transferred". The transfers, as it were, are divided into two categories, sales and non-sales. The

expression "otherwise" exhausts all the categories of transfers other than sales which are transfers of a kind for consideration. The expression

"otherwise" occurring in a combination of words has sometimes been regarded as indicating the application of the ejusdem generis rule. For

instance, the expression "contract or otherwise" occurring in section 10 of the Estate Duty Act, 1953, was interpreted by courts to mean either a

sale or something akin to a sale. See *Attorney-General v. Secombe* [1911] 2 KB 688 and *George Da Costa Vs. Controller of Estate Duty* in

Mysore, Bangalore, . This interpretation of the expression "otherwise" can, however, be explained by reference to the particular context of the

estate duty provisions, and also, presumably, by the court's disinclination to give a wider berth than was felt absolutely necessary to give effect to an

anti-tax avoidance provision like section 10 of that Act. In construing the expression "'sold or otherwise transferred'" occurring in section 155(5) of

the Income Tax Act, however, we are under no such compulsion or restriction. This is because the subject and context of section 155(5) clearly

point to the intention of Parliament that the machinery which has obtained a grant of development rebate by reason of its having come under the

ownership of the assessee should continue to remain in the same ownership and should not be parted with by him for a period of at least eight

years from the date of installation. In this context, therefore, any parting with that asset would involve a breach of the statutory condition subject to

which alone development rebate is originally granted. It stands to reason, therefore, that the expression "'otherwise transferred'" must be given such

wide amplitude of meaning as is consistent with its ordinary connotation. There can be no warrant for cutting down that meaning, to any extent.

8. Mr. Rebello cited a few decisions in support of his contention that no transfer at all could be held to take place in a situation where the separate

property of a partner becomes the partnership property on the constitution of the firm. He referred to Commissioner of Income Tax Vs. Janab N.

Hyath Batcha Sahib, , decided by a Bench of this court. The question in that case was whether a depreciable asset like machinery owned by an

individual assessee could be regarded as having been "'sold'", rendering the assessee thereby liable to a balancing charge under the proviso to

section 10(2)(vii) of the Indian Income Tax Act, 1922, when the individual brings that item of depreciable asset into the joint stock of partnership

assets on the formation of a partnership firm. This court, purporting to follow a judgment of the Supreme Court in Commissioner of Income Tax,

Madhya Pradesh Vs. Dewas Cine Corporation, , held that, in the events that happened, no sale at all was involved of the depreciated machinery

within the meaning of the proviso to section 10(2)(vii) of the Indian Income Tax Act, 1922.

9. The ruling of the Supreme Court in Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, did not, however, go to the

extent of holding that where partners bring into a firm their own separate properties, the process does not involve a transfer of property from the

individual partner to the partnership. On the contrary, the Supreme Court would seem to have maintained a distinction between the formation of a

partnership in which the separate property of incoming partners is brought into the partnership and the dissolution of a partnership in which the partners allot to themselves assets of the partnership under a preferred scheme of dissolution. The Supreme Court was concerned with examining whether the latter process involved a "sale" within the meaning of the proviso to section 10(2)(vii) of the Indian Income Tax Act, 1922. On this point, the Supreme Court expressed the view that there is no transfer of property for a price when the dissolving partners take back partnership assets as and towards their shares in the dissolution. Elsewhere in the course of their discussion, however, the Supreme Court made it quite clear that under the Partnership Act, property which is brought into the partnership by the partners at the time when it is formed does become the property of the partnership. Adverting to the facts in the particular case before them, the Supreme Court observed that when the two partners brought in the theatres of their respective separate ownership into the partnership the theatres must be deemed to have become the property of the partnership firm. This part of the judgment of the Supreme Court indicates that the learned judges did not regard the bringing into the partnership of the separate properties of the partners at the time of the formation of the partnership as a mere "adjustment" of partner's rights inter se.

10. Notwithstanding the clear-cut distinction made by the Supreme Court between the legal consequences of the formation of a partnership, on the one hand, and the dissolution of partnership on the other, as respects the jural character of the transactions, this court in *Commissioner of Income Tax Vs. Janab N. Hyath Batcha Sahib*, seems to have thought that there was no material difference between the two terminal transactions.

For coming to that conclusion, this court not only relied on the observations of the Supreme Court, but set them down verbatim in a quotation. The quotation, however, is not of a contiguous passage of the Supreme Court's judgment, but widely separated portions of the Supreme Court's judgment taken from different parts of the judgment, and joined together with the help of dots. Without any further discussion of the Division Bench ruling, therefore, we should express our preference, as we must abide by the decision of the Supreme Court rather than be led by the observations contained in the judgment of this court.

11. It would be apposite, at this stage, to refer to a later decision of the Supreme Court in *Malabar Fisheries Co. Vs. Commissioner of Income*

Tax, Kerala, . In this case, the Supreme Court examined the construction and application of section 155(5) of the Income Tax Act, 1961, directly

in the context of the dissolution of a firm under the scheme of dissolution in which the partners took back properties of the firm in specie as and

towards their shares in the dissolution. The question before the Supreme Court was whether there was any "sale" or "transfer" involved in the

process of dissolution in the manner aforesaid. The Supreme Court, following the principles laid down in *Commissioner of Income Tax, Madhya*

Pradesh Vs. Dewas Cine Corporation, which, as we earlier pointed out, was also a case of dissolution of a firm and adjustment of partner's rights

inter se, held that there was no transfer involved when the partners took, as and towards their shares in the dissolution, properties belonging to the

firm. What is of interest in this judgment is a reference by the Supreme Court to the judgment of the Karnataka High Court in *Addl. Commissioner*

of Income Tax, Mysore Vs. M.A.J. Vasanaik, . The case before the Karnataka High Court was not a case of dissolution of partnership or of any

adjustment of the partner's rights, *inter se*, in the dissolution with reference to the properties of the firm. It was, on the contrary, a case where

individual separate assets of partners were brought into a partnership firm so as to constitute the partnership properties. The question before the

Karnataka High Court was whether there was a transfer of any property by the individual partners to the partnership concern within the meaning of

section 155(5) of the Act. The Supreme Court considered this judgment of the Karnataka High Court as a decision dealing with a position

converse to the case before them in the case of *Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala*, , which was a case of

dissolution and allotment of firm's properties to the shares of the partners in dissolution. The Supreme Court observed that there was no scope for

any parity of reasoning for deciding these two kinds of cases, the one involving the distribution, division or allotment of assets to the partners which

flows from the firm's dissolution and the converse case of individual assets of a partner being brought into a partnership firm at the inception of the

firm. Having pointed out this distinction and having observed that there was no parallel between the two kinds of cases, the Supreme Court,

however, did not wish to proceed further and express any opinion as the correctness or otherwise of the view of the Karnataka High Court on the applicability of section 155(5) of the Act to the case before that court.

12. In our judgment, the observations of the Supreme Court as respects the decision of the Karnataka High Court in Addl. Commissioner of

Income Tax, Mysore Vs. M.A.J. Vasanaik, , clearly point to the distinction between the case of a dissolution of a firm and the case of a formation

of a partnership. There is no meeting point between the two kinds of cases. In the process of dissolution, the partners are merely engaged in

winding up the business, payment to creditors and arriving at the surplus which is divisible between themselves according to their aliquot shares. In

such a transaction, it would be permissible to regard the whole process as constituting, in substance, a mere adjustment of the respective rights of

partners. Not so, however, is the case of formation of a partnership in which the separate properties of persons, who agree to become partners,

are thrown into a common stock of the partnership. In such case, there definitely is a change in the ownership of the property from the incoming

partner to that of the partnership. It may be that, notwithstanding that the partner parts with his exclusive ownership of the property in favour of the

partnership firm he does, in view of his position as a partner, retain still, a medium of interest in the partnership assets subject to the terms of the

partnership. But this is an attribute of a partner's and it does not militate against the operation of take-over of the partner's property by the firm

being regarded as a transfer if we follow the conception of the Transfer of Property Act under which even a transfer of property by anyone to

himself and to another is to be regarded as a transfer.

13. The second part of the contention put forward by Mr. Rebello before us was that even if the take-over of the assessee's machinery by the

partnership can be treated as an act of transfer by the assessee, yet, since the transfer was to a partnership firm, it cannot be regarded as a transfer to

a "person" within the meaning of section 155(5) of the Act. An argument of this nature might easily be regarded as raising a hornet's nest, because

it poses the perennial problem whether a partnership firm is, in the eye of law, a legal person. There never was a more sterile controversy in Anglo-

Saxon jurisprudence and the legal systems which are modelled thereon, than the

question whether a partnership firm is or is not a legal person, especially at the present moment in the evolution of the law merchant, not to speak of the modernisation of the law of partnership. The arguments on either side of the line in this controversy seem to us to be a little overworked. Even in England, the home of the pure theory of partnership, a firm is not completely regarded to be a legal person. Those who were responsible for bringing the Indian Partnership Act into the statute book, however, would seem to have steered a middle course, giving to a partnership firm a limited personality. Indeed, a report of the Special Committee which drew up the draft of the Indian Partnership Act, 1932, endorsed the view of Lindley that non-recognition of the firm as an entity was a defect in the law of partnership. They also pointed out that even the English Partnership Act, 1890, has been forced to depart from the strict legal view of the firm considering that it contains appropriate provisions of changes in the constitution and the like. The framers of the Indian Partnership Act, therefore, have accepted, in principle, the position that the firm must have some degree of personality, of continuity in its existence, in spite of internal changes. This explains the whole gamut of provisions in our Partnership Act in Chapter V, especially relating to introduction of partners, retirement or expulsion of partner and the like. In Scotland, where the law apparently follows the accountant's view of a firm, a partnership is regarded as a legal person. These provisions apparently led the Privy Council to observe in AIR 1948 100 (Privy Council) , as follows (p. 101) :

Before the Board it was argued that under the Indian Partnership Act, 1932, a firm is recognised as an entity apart from the persons constituting it and that the entity continues so long as the firm exists and continues to carry on its business. It is true that the Indian Partnership Act goes farther than the English Partnership Act, 1890, in recognising that a firm may possess a personality distinct from the persons constituting it, the law in India in that respect being more in accordance with the law of Scotland, than with that of England. But the fact that a firm possesses a distinct personality does not involve that the personality continues unchanged so long as the business of the firm continues.

15. Whatever might be the position of a firm under the general law of partnership, for the purpose of Income Tax, it can hardly be denied that a

firm is an assessable entity, distinct and separate from the partners composing it. This has always been the position not only in the Income Tax Act

but also under the other taxation laws. The elaborate procedure laid down in the Income Tax Act for granting registration to a firm for the purpose

of charging Income Tax is not so much to recognise a firm as an entity but to derecognise it and to make the assessment on the individual partners.

The normal position of a firm under the scheme of the Income Tax Act is that it is an entity assessable on its own. The registration of a firm under

the fiscal statute is only for the purpose of getting at the shares of the partners to be included in their respective separate total income.

16. The position of a partnership firm as a separate entity under the Income Tax Act has never been in doubt. As early as in Commissioner of

Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, , the Supreme Court gave expression to the following view (p. 408) :

It is true that under the law of partnership, a firm has no legal existence apart from its partners and it is merely a compendious name to describe its

partners but it is also equally true that under that law there is no dissolution of the firm by the mere incoming or outgoing of partners. A partner can

retire with the consent of the other partners and a person can be introduced in the partnership by the consent of the other partners. The

reconstituted firm can carry on its business in the same firm name till dissolution. The law with respect to retiring partners as enacted in the

Partnership Act is to a certain extent a compromise between the strict doctrine of English Common law which refuses to see anything in the firm

but a collective name for individuals carrying on business in partnership and the mercantile usage which recognises the firm as a distinct person or

quasi-corporation. But under the Income Tax Act, the position is somewhat different. A firm can be charged as a distinct assessable entity as

distinct from its partners who can also be assessed individually..... The partners of the firm are distinct assessable entities, while the firm as such

is a separate and distinct unit for purposes of assessment. Sections 26, 48 and 55 of the Act fully bear out this position. These provisions of the

Act go to show that the technical view of the nature of a partnership, under English law or Indian law, cannot be taken in applying the law of

Income Tax.

17. It has been held in a subsequent decision of the Supreme Court that the decision in Commissioner of Income Tax, West Bengal Vs. A.W.

Figgies and Co. and Others, , was based on AIR 1948 100 (Privy Council) . See Dulichand Lakshminarayan Vs. The Commissioner of Income

Tax, Nagpur, .

18. The authority of the decision of the Supreme Court in Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, , has

never been shaken despite the plethora of decisions subsequent thereto. The view of the Supreme Court in that decision has been reiterated in a

recent decision of the Supreme Court in D.S. Bist and Sons, Nainital Vs. Commissioner of Income Tax, Delhi Central, New Delhi, . The relevant

observation is as follow (p. 133) :

Now we must remember that we are dealing with a case under the Income Tax Act. We are concerned with provisions for the computation of

income of an assessee for the purpose of determining its Income Tax liability. It may be, as is quite often said, that a firm is merely a compendious

description of the individuals who carry on the partnership business. But under the Income Tax Act, a firm is a distinct assessable entity. Section 3

of the Indian Income Tax Act, 1922, treats is as such, and the entire process of computation of the income of a firm proceeds on the basis that it is

a distinct assessable entity. In that respect, it is distinct even from its partners : Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and

Co. and Others, .

19. There are, no doubt, cases in books including decisions of the Supreme Court wherein the purist view that a firm is not a legal entity has been

applied to the interpretation and application of various provisions even in the taxing enactments. In Malabar Fisheries Co. Vs. Commissioner of

Income Tax, Kerala, itself, which we cited in another connection earlier, the Supreme Court had adopted the restricted English view of a firm for

applying section 155(5) of the Act to the case of adjustment of the shares of partners on a dissolution by obtaining allotment of the firm's property

as and towards their shares. In considering the applicability of section 155(5) to a situation of that kind, the Supreme Court felt inclined to hold that

the firm as such was not an entity. The earliest tax case in which the pure theory of a firm as a merely compendious name for the partners was

adopted was *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, . In that case, however, the pertinent discussion was not

whether a firm was an assessable entity under the Income Tax Act, but whether a firm can be regarded as a "person" within the meaning of section

4 of the Indian Partnership Act, 1932. That section defines a partnership as the relation between "persons" who have agreed to share the profits of

a business carried on by all or any of them acting for all. The question before the Supreme Court in that case was whether the firm as such can be

persons in such a sense that two firms, as such, can enter into a common partnership. The view of the Supreme Court was that it was not possible,

under the Indian law, for such a firm to come into existence. In the course of their discussion, the Supreme Court referred to section 3(42) of the

General Clauses Act which defines a person as including any association or body of individuals, whether incorporated or not. While referring to

this clause in the General Clauses Act, the Supreme Court, however, expressed the view that the definition in the General Clauses Act cannot be

applied to section 4 of the Partnership Act for getting at the meaning of the expression "person" occurring in it since to do so would be

repugnant to the subject of partnership law. This decision of the Supreme Court, however, has obviously been misread in subsequent decisions as

an authority for the proposition that even for the purpose of Income Tax law, a firm cannot be regarded as a person. We have earlier referred to

the pronouncement of the Supreme Court in *Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others*, , reiterated by the

recent decision in *Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala*, . These are clear authorities for the position that a partnership

firm must be regarded as an entity in itself for the purposes of the Income Tax Act.

20. Apart from the various charging and machinery provisions of the Act which regard a firm as possessing a taxable personality of its own, the

definition of the expression "person" occurring in section 2(31)(iv) of the Income Tax Act, 1961, expressly includes a firm. This is the definition of

the expression "person" even while the Income Tax Act adopts the definition of a firm, without variation, from the Indian Partnership Act 1932,

vide section 2(23) of the Income Tax Act. There is nothing in the subject or context of section 155(5), wherein the expression "person" occurs,

which would render repugnant the application of the definition of the expression "person" occurring in section 2(31)(iv) as including a firm.

21. Mr. Rebello, in the course of his submission, also made a reference to a recent judgment of a Division Bench of this court in Commissioner of

Income Tax Vs. Sree Kaliswari Colour Match Works, . In this case, section 155(5) of the Act was directly under consideration. The facts of the

case, however, were different and the application of the section arose in a different context. In that case, development rebate was granted to a

partnership firm of three partners who installed new machinery in their business. But within the statutory period of eight years, there was a change

in the constitution of the firm. From a partnership of three partners, it became a partnership of eight partners. It is easy to see that in such a case as

this it cannot be said that in its reconstitution after a change, the assessee-firm could be said to have "transferred" the machinery in any sense, since

both before and after the change in the constitution, the firm remains the same and its identity continues unchanged. The learned judges accordingly

ruled out the application of section 155(5) in that case and, in our opinion, rightly so. Indeed, in the course of their judgment, the learned judges

instituted such a searching inquiry into the factual position of the case which enabled them to observe that the deed of reconstitution only made

explicit what was already implicit in the original deed of partnership, thereby suggesting that there was not even a reconstitution of the original

partnership firm. Apparently, on the facts of that case, the learned judges took the view that even in the original partnership firm, all the original

partners only represented their respective branch families and in the process of reconstitution of the firm all that happened was that the several

individual members of the three branches became partners in name whereas they were already partners in fact. We agree with respect with the

underlying principle of this decision, namely, that a mere change in the constitution of a firm does not bring about a transfer of assets from the firm

as constituted before the change to the firm as reconstituted after the change. The case under reference before us, however, is quite different from

that of a mere reconstitution of the firm. What in this case had occurred was the transfer, as change of ownership of the property from the assessee

as an transfer, as change of ownership of the property from the assessee as an individual owner of the assets to a partnership firm. This kind of

case had not been considered by the Bench in the earlier case cited, Commissioner of Income Tax Vs. Sree Kaliswari Colour Match Works, .

22. Our conclusion, therefore, is that there was a transfer by the assessee of the items of machinery which had obtained development rebate when

the assessee formed a partnership along with the son and that partnership became the owner of the sole proprietary business including the items of

machinery in question. The conclusion of ours accords with the conclusion of the Tribunal. But we must hasten to add that the Tribunal had arrived

at its conclusion by a process of reasoning which, to our mind, is wholly irrelevant to the discussion. The Tribunal, no doubt, set about their task of

construing the expression ""otherwise transferred"" occurring in section 155(5), but they made the mistake of seeking the meaning of the expression

transfer"" in section 2(17) of the Act. This clause, however, cannot be an appropriate aid to the construction of the cognate expression

transferred"" put into the interpretation clause of section 2(47) for a particular purpose, namely, ""in relation to a capital asset"". A capital asset is

also defined in the Act u/s 2(14). Both these definitions, one u/s 2(14) and the other u/s 2(47), have relevance only to charge of tax under the head

Capital gains"", the charge being laid only on any profit or gain arising on the ""transfer of a capital asset"". This head of charge, however, has nothing

whatever to do with the development rebate, or, for that matter, with any of the allowances granted by the Act for effectuating the charge under the

quite different head of income, namely, ""Business"". Whereas items of plant and machinery employed in a business are business assets and they can

also be regarded as capital assets in one sense, the expression ""transfer"" as defined in section 2(47) is meant exclusively for the purpose of

assessment under the head ""Capital gains"" and under no other head of income under the Act. Having regard to the watertight compartmentalisation

of different heads of income, which is the elementary scheme of the Income Tax Act, it was wholly a far-fetched exercise in statutory construction

which the Tribunal undertook when they applied the definition in section 2(47) to do service as an aid to the construction of the expression

transfer"" occurring in section 155(5) of the Act. If there was nothing else in this case excepting to have to resort to section 2(47), then we should

have differed not only from the reasoning of the Tribunal, but also from the Tribunal's ultimate conclusion. However, in view of our construction of

section 155(5), in its own terms, and in view of our decision that the take-over of the assessee's sole proprietary business assets by the

partnership firm involves a transfer of machinery which formed part of these assets, we sustain the Tribunal's conclusion while repudiating almost

the entirety of their reasoned judgment.

23. The question of law for our decision has been formulated in the following terms :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the disallowance of development rebate for

the assessment years 1965-66, 1966-67 and 1967-68 ?

24. Our answer to the question is in the affirmative and against the assessee. The Department will have its cost. Counsel's for Rs. 500 (one set).