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(1998) 12 MAD CK 0048

In the Madras High Court

Case No : Tax Case No. 316 of 1994 (Reference No. 131 of 1994)

Commissioner of Income Tax APPELLANT

Vs

Al. Ramanathan RESPONDENT

Date of Decision : 12-12-1998

Acts Referred:

Income Tax Act, 1961 — Section 47

Citation : (2000) 245 ITR 494

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

A. Subulakshmy, J.—The assessee is a Hindu undivided family. The karta of this joint family is Shri A. L. Ramanathan, son of Shri L. Ala-

gusundaram Chettiar. On April 12, 1952, there was a partition between Shri Alagusundaram Chettiar and his brother, Shri L. Narayanan Chettiar.

On September 12, 1955, there was a partition in the joint family of which Alagusundaram Chettiar was the karta and his three sons, viz., Al.

Laksh-manan, A1. Periannan and Al. Ramanathan, were the other co-parceners. Disputes arose in the family and an interim agreement was

entered into on August 19, 1980, under which the assessee''s side was to receive Rs. 8 lakhs and certain lands in Kothagai Village and in return

they were required to transfer half of their shareholding in Mahalakshmi Textile Mills Ltd., Lakshmi Lines Ltd. and Charlie Engineering Co. Ltd., to

the other side subject to full settlement later. On August 20, 1981, the final agreement was drawn up recording the oral agreement dated May 6,

1981, under which the assessee''s side was to receive a further amount of Rs. 11

lakhs which was paid on June 19, 1981, in addition to Rs. 8

lakhs paid on September 9, 1980, and also keep the land transferred to them on September 10, 1990, as well as the brick chamber transferred by

another registered transfer deed and, in return, the other side was to retain the shares in Mahalakshmi Textile Mills Ltd., Lakshmi Lines Ltd. and

Charlie Engineering Co. Ltd., etc., transferred by the assessee''s side to them in accordance with the earlier agreement dated August 19, 1980. So,

by virtue of that agreement the rights between the parties were settled. The assessee claimed that the agreements dated August 19, 1980, and June

20, 1981, should be taken as supplement to the earlier partition dated September 12,1955, thus not amounting to a transfer u/s 47 or in the

alternative as a family arrangement not amounting to a transfer such that the capital gains from these transactions could not be assessed to tax. The

assessee further contends that the consideration paid was not only for the transfer of the assets but also to avoid continuous friction and to buy

peace and the amount had to be excluded from the capital gains. The Income Tax Officer rejected the contentions of the assessee and took the

view that the transactions amounted to transfer of title in respect of which capital gains were exigible to tax. The assessee preferred an appeal to

the Commissioner of Income Tax and the Commissioner has rejected the contentions of the assessee. On appeal to the Tribunal, the Tribunal came

to the conclusion that the transaction is only a family arrangement and it does not involve any transfer of title of the properties transferred and the

transaction of family arrangement does not give rise to capital gains. On that, the reference has arisen and at the instance of the Revenue, the

following question has been referred to this court for our opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the transactions of the assessee amount to

a family arrangement and cannot be termed as a transfer and there was no chargeable capital gains arising from that transaction ?

2. A perusal of the records goes to establish that the dispute arose in that family and the family arrangement was arrived at in consultation with the

panchayatdars and accordingly re-alignment of interest in several properties had resulted. The family arrangement was arrived at in order to avoid

continuous friction and to maintain peace among the family members. The family

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arrangement is an agreement between the members of the same

family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the

family property or the peace and security of the family by avoiding litigation or by saving its honour. So, family arrangements are governed by

principles which are not applicable to dealings between strangers and the family arrangement among them is for the interest of the family, for the

harmonious way of living. So, such re-alignment of interest by way of effecting a family arrangement among the family members would not amount

to transfer.

3. This court has held in CIT v. R. Ponnammal [1987] 164 ITR 706 that (headnote):

. . . the family arrangement had been brought about by the intervention of the panchayatdars and this clearly showed that the sons and daughters

of the assessee were laying claims to the property which the assessee got under the will of her father and it was not relevant at the time when the

family arrangement was entered into to find out as to whether such claims if made in a court of law would be sustained or not. If the assessee found

it worthwhile to settle the dispute between herself, her sons and daughters by making the family arrangement, the said arrangement could not be

ignored by a tax authority. In view of the finding of the Tribunal, the family arrangement dated December 17, 1971, had to be held to be a valid

piece of document and, hence, the Tribunal was right in its view that no transfer of property was involved within the meaning of Section 2(xxiv) of

the Gift-tax Act and, hence, there was no liability to gift-tax either u/s 4(1)(a) or u/s 4(2) and consequently no question of inclusion of the income

of the minor in the hands of the assessee would also arise.

4. It is the settled law that when parties enter into a family arrangement, the validity of the family arrangement is not to be judged with reference to

whether the parties who raised disputes or rights or claimed rights in certain properties had in law any such right or not. In Maturi Pullaiah and

Another Vs. Maturi Narasimham and Others, , the Supreme Court has observed that (page 1841) ;

Briefly stated, though conflict of legal claims in praesenti or de future is generally a condition for the validity of a family arrangement, it is not

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necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may,

to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide

and the terms thereof are fair in the circumstances of a particular case, courts will more readily give assent to such an arrangement than to avoid it.

5. In Kale and Others Vs. Deputy Director of Consolidation and Others, , the Supreme Court has laid down the propositions which are the

essentials of a family arrangement that (page 812):

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of

properties between the various members of the family ;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence ;

6. The Tribunal, on the facts, found that the family arrangement involved in this case appears to be a bona fide one inasmuch as it has been shown

to have been made voluntarily and not induced by any fraud or collusion and the conduct of the parties referred to by the Revenue is consistent

with the bona fide family arrangement particularly when it was arrived at in the presence of panchayatdars. So, the family arrangement is a bona

fide one and it was effected to dissolve the family dispute.

7. Applying the principles laid down in the decisions cited supra, we hold that the family arrangement involved in this case does not amount to

transfer. The Tribunal is perfectly justified in taking the view that the transaction of the assessee being a family arrangement did not amount to

transfer and therefore, there was no chargeable capital gain arising from that transaction. So, the transaction of the assessee did not amount to

transfer and there was no chargeable capital gain arising from that transaction.

8. We answer the question of law in favour of the assessee and against the Revenue. No costs.

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