
(2011) 11 MAD CK 0258
In the Madras High Court
Case No : T.C. (A) No. 474 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Associated Electrical Agencies

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Income Tax Act, 1961 — Section 45, 45(4), 47(ii)

Citation : (2012) 204 TAXMAN 82

Hon'ble Judges : P.P.S. Janarthana Raja, J; P. Jyothimani, J

Bench : Division Bench

Advocate : Patty B. Jagannathan, for the Appellant; C. Manishankar, for the Respondent

Final Decision : Disposed Off

Judgement

P. Jyothimani, J.—The above tax case appeal is preferred by the Revenue against the impugned order of the Income Tax Appellate Tribunal dated 21.01.2003 passed in ITA No. 583/Mds/1994 for the assessment year 1989-90, which was admitted on the following substantial questions of law: 1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 45(4) does not apply to the assessee?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in applying the ratio of the Supreme Court's judgment in the case of Tribhuvan Das G. Patel Vs. Commr. of Income Tax, Bombay, to the present case when the Supreme Court dealt with taxation of capital gains in the hands of the retiring partner and the present case deals with taxation in the hands of the existing firm?

We have heard the arguments of Mr. Patty B. Jagannathan on behalf of the Department as well as the arguments of Mr. C. Manishankar appearing for the respondent.

2. The issue relates to the assessment year 1989-90. The assessee, which is a

partnership firm originally consisting of eight persons, viz., 1. P. Obul Reddy, 2. Mrs. P. Meenakshi, 3. Mrs. P. Vijayalakshmi, 4. Mrs. P. Preetha Reddy, 5. Mr. S.R. Jiwarajka, 6. Mrs. Lakshmi Devi Jiwarajka, 7. Mr. Rajendra Prasad Khaitan and 8. G.K. Jiwarajka was constituted on 01.08.1977; out of whom four persons, viz., Mr. Rajendra Prasad Khaitan, 2. Mrs. Lakshmi Devi Jiwarajka, 3. Mr. Gopal Kumar Jiwarajka and 4. Mr. S.R. Jiwarajka were retired from the firm on 31.07.1988. There was a deed of retirement by the retiring partners dated 11.09.1989 and a new partnership deed was entered into between the existing partners on 27.09.1989.

3. The assessee filed return of income for the assessment year 1989-90 disclosing a total income of Rs. 23,82,720/-. The assessing officer passed an order including the shares, which are transferred to the retiring partners as income under the caption of capital gains. The Assessing Officer has concluded that there is an element of transfer resulting in capital gains at the hands of the assessee. It was against this order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who dismissed the said appeal on 31.01.1994 holding that with effect from 01.04.1988 considerable change has been brought in Section 45(4) of the Income Tax Act in the provision of Capital Gains Tax and on that basis, the retirement was already very much within the ambit of Section 45(4) of the Act.

4. It was against the order of the Commissioner of Income Tax (Appeals), the assessee preferred an appeal before the Income Tax Appellate Tribunal, which allowed the appeal relying on the judgment of the Hon'ble Supreme Court in *Tribhuvan Das G. Patel Vs. Commr. of Income Tax, Bombay*, holding that the retirement does not involve any transfer resulting in capital gain. It is against the said order of the Income Tax Appellate Tribunal, the Revenue has preferred this appeal on the above mentioned substantial questions of law.

5. On a perusal of the order of the Income Tax Appellate Tribunal, we find that the Tribunal has solely relied upon the judgment of the Hon'ble Apex Court in *Tribhuvan Das G. Patel (supra)* wherein the Supreme Court has dealt with only Section 45 and Section 47(ii) of the Income Tax Act and allowed the appeal. The Supreme Court judgment, which has been relied upon by the Income Tax Appellate Tribunal in the impugned order is absolutely having no relevance to the facts of the present case, which is based on Section 45(4) of the Income Tax Act, 1961, which came into effect by way of amendment dated 01.04.1988.

6. In such view of the matter, we are of the considered opinion that the matter has to be remanded back to the Income Tax Appellate Tribunal for re-consideration of the entire issue. Accordingly, the impugned order of the Tribunal dated 21.01.2003 is set aside and the matter is remitted back to the Tribunal with a direction to give opportunity to both the parties to raise all the issues necessary for deciding the matter. This tax case is disposed of accordingly. No costs.