
(1983) 07 MAD CK 0043

In the Madras High Court

Case No : Tax Case Petition No. 125 of 1983

Commissioner of Income Tax

APPELLANT

Vs

M. Ramaswamy

RESPONDENT

Date of Decision : 27-07-1983

Acts Referred:

Income Tax Act, 1961 — Section 256, 256(2), 45

Citation : (1985) 57 CompCas 7 : (1985) 151 ITR 122

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : A.N. Rangaswamy and Nalini Chidambaram, for the Appellant; P.P.S. Janarthana Raja, for Subbaraya Iyer, Padmanabhan and Ramamani, for the Respondent

Judgement

Ramanujam, J.—The two questions that are sought to be referred to this court for its opinion by the Revenue are as follows :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the shares pertaining to the "sick mills" have been validly transferred to Messrs. Karumuthu Ramaswamy Finance (P.) Ltd., during the accounting year relevant to the assessment year 1977-78 and, hence, the assessee is entitled to loss on such transfer ?

2. Whether the Appellate Tribunal's further finding to the effect that shares being movable property can be transferred as per the articles of the company and the transferee gets the right of ownership even if the transaction is not entered in the share registers of the company is sustain-able in law ? "

2. The facts leading to the filing of this reference petition may briefly be stated : The assessee is an individual having income from a partnership firm, share dividends, sitting fees, etc. He sold some shares during the year which he held in the Bank of Madurai Ltd. and Rajendra Textile Mills Ltd. The said amount was considered for capital gains. He also sustained some loss in selling the shares of

Alagappa Textiles (Cochin) Ltd., which was a sick mill. The latter shares were sold to Messrs. Karumuthu Ramaswamy Finance (P.) Ltd. at the rate of Re. 1 per share, while the face value of the share was Rs. 100. The ITO observed that the mills whose shares are stated to have been sold were declared as sick mills, the management having been taken over by the Government from April 1, 1972, and finally nationalised with effect from April 1, 1974, and that after nationalisation, the compensation fixed by the Government was even inadequate to pay off the secured and unsecured creditors and, hence, the value of the share was practically "nil". Besides that, he noted that the purchasing company consisted only of three shareholders, the assessee, his brother and father. Therefore, he held that the sale transaction was a sham transaction. He also held that the alleged transfer in the name of Karumuthu Ramaswamy Finance (P.) Ltd. did not find a place in the share certificate register maintained by the company and that, therefore, the sale could not be considered as complete and in view of that the assessee continued to be the owner of the shares in question. In these circumstances, the ITO rejected the assessee's claim for adjustment of "capital loss" as against "capital gains".

3. On appeal, the AAC held that the sale transactions were not sham, as found by the ITO, but yet he agreed with the ITO that in the absence of entries in the share registers of the respective companies indicating the sale of shares, the sales cannot be taken to be complete and that, therefore, the assessee is not entitled to the set off of the "capital loss".

4. The assessee preferred an appeal before the Tribunal contending that as between the transferor and the transferee the transaction of sale of shares is complete and from the mere fact that the company has not recognised the transfer and made entries in the share registers, it cannot be said that the transfer is incomplete. The Tribunal, following the decision of the Supreme Court in *Shelat v. Thakar* [1975] 45 Comp Cas 43, held that the ownership of the shares stood transferred from the assessee to the purchasers, Messrs. Karumuthu Ramaswamy Finance (P.) Ltd., notwithstanding the fact that the transfer of shares had not been registered in the company's books, and, therefore, the assessee was entitled to claim adjustment of the "capital loss".

5. Aggrieved by the decision of the Tribunal, the Revenue seeks to raise the aforesaid two questions for the opinion of this court.

6. The learned counsel for the Revenue contends that even though all the formalities have been completed as between the transferor and the transferee, the transfer of shares cannot be said to be complete so as to enable the purchasers to acquire title to the shares, unless the transfer is registered in the company's share registers. In support of the said submission, the learned counsel refers to the statement of law in *Palmer's Company Law* (twenty-first edition, page 334):

"A transfer is incomplete until registered. Pending registration, the transferee has

only an equitable right to the shares transferred to him. He does not become the legal owner until his name is entered on the register in respect of these shares."

7. The learned counsel for the Revenue also refers to the decision of the Supreme Court in *Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta.*, , and that of this court in *R. Subba Naidu Vs. Commissioner of Gift Tax*, , in support of his contention that until the transfer is registered in the books of the company, the transferee acquires no right, though as between the transferor and the transferee, there may be equities to be adjusted. But, in a later decision of the Supreme Court in *Shelat v. Tkakar* [1975] 45 Comp Cas 43, the Supreme Court has clearly laid down that where, as between the transferor and the transferee, all formalities have been gone through, such as the execution of a document of transfer and the physical handing over of the shares by the transferor to the transferee, the shares should be taken to have been transferred to the transferee, though until the transfer of shares is registered in the company's books in accordance with the company law, the transfer could not enable the transferee to exercise rights of a shareholder vis-a-vis the company. The facts of the case before the Supreme Court were more or less similar to the case on hand. In that case, there was a registered gift deed purporting to transfer certain shares held by B in different companies to her brother, V. The deed was signed by the donor as " the giver " as well as by the donee as " the acceptor " of the gift and was duly attested by six witnesses. In that deed, the donor specified and gave particulars of the shares meant to be gifted and undertook to get the name of the donee put on the registers of the companies concerned. The donor declared that she was thenceforth a trustee for the donee with regard to the income she might get, till such time as the donee's name was entered in the registers of the companies. The donor delivered the registered gift deed together with the share certificates to the donee and had also signed several blank transfer forms so as to enable V to get the transfers registered in the share registers of the companies, but, before the transfers could be entered in the registers, the donor died. A question arose as to whether, on the facts and in the circumstances of the case, there was a complete transfer of shares even during the lifetime of the donor. The Supreme Court held that the requirements of both Sections 122 and 123 of the Transfer of Property Act, 1882, were completely satisfied so as to vest the right in the donee to obtain the share certificates in accordance with the provisions of the company law, that the gift of the right to get share certificates made out in the name of the donee became irrevocable and complete by registration of the deed as well as by delivery and nothing was left to be done so far as the vesting of such a right in the donee was concerned and that the actual transfers in the registers of the companies concerned, which were necessary to enable the donee to exercise the rights of a shareholder, were mere enforcement of that right, and the mere fact that such transfers had to be recorded in accordance with the company law did not detract from the completeness of what was donated. According to the said decision of the Supreme Court, if the transferor has transferred the right to get the share

certificates from the company in the name of the donee, then, as between the transferor and the transferee, the transfer is complete, though the transferee cannot exercise his rights as a shareholder vis-a-vis the company, until the transfer of shares is recorded in the register of shareholders of the company. The aforesaid decision of the Supreme Court practically takes away the force of the contention of the learned counsel for the Revenue that till the shares are actually registered by the company in the name of the transferee, the transferee cannot be taken to have acquired certain equitable rights in relation to his shares and that he cannot be taken to have become the transferee of the shares. As a matter of fact, in the present case, the transfer forms duly signed by the transferor along with the share certificates have been handed over to the transferee and the transferee has sought registration of the transfer in the books of the company. The company has not refused to recognise the transfer, but it has stated that the registers are not immediately available to record the transfer of shares. In these circumstances, the aforesaid decision of the Supreme Court in *Shelat v. Thakar* [1975] 45 Comp Cas 43, directly applies to the facts of this case and, therefore, the decision of the Tribunal cannot be said to be erroneous.

8. In this view, the petition is dismissed. There will be no order as to costs.