(1993) 06 BOM CK 0037

In the Bombay High Court

Case No : IT Ref. No. 278 of 1981

Commissioner of Income Tax APPELLANT

Vs

Mathuradas Mulji RESPONDENT

Date of Decision : 11-06-1993

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1995) 129 CTR 360 : (1995) 215 ITR 668 : (1993) 71 TAXMAN 27

Hon'ble Judges : V.A. Mohta, J;U.T. Shah, J

Bench : Division Bench

Advocate : K.M.L. Majele, Deokinandan, for the Appellant;

Judgement

V.A. Mohta, J.—The following questions have been referred to this Court at the instance of the CIT Bombay, under s. 256(1) of the IT Act, 1961 :

"1. Whether, on the facts and in the circumstances, the Tribunal has rightly held that the property in the 4/5th shares remained with the vendors although the vendors had handed over the share scrips together with the blank transfer forms to the guarantor ?

2. Whether, the Tribunal has rightly deleted Rs. 2,98,605 dividend income from the total income of the assessee ?"

2. The assessee is an individual, and the relevant assessment year is 1970-71. The crux of the matter is whether the property in shares held by James Finlay & Co. Ltd. passed to the purchasers. The assessee and his brother Ratansinh Mulji (''purchasers'') jointly agreed with James Finlay & Co. Ltd., Glasgow (''vendor'') to purchase the shares in three textile mills, viz., Swan Mills Ltd., Finlay Mills Ltd., and Gold Mohur Mills Ltd. at a total price of Rs. 94,82,181 by an agreement dt. 20th February, 1968. Under the terms of the agreement the payment was to be made in 10 six-monthly installments, and upon the payment of each installment, 1/10th of the shareholdings was transferred in the names of the purchasers. The purchasers had to furnish, within 31st March, 1968, or within

the mutually agreed time, the irrevocable guarantee to ensure the payment of consideration in terms of the agreement either from a bank or an insurance company, approved by the vendors. The New India Assurance Co. Ltd. (''Insurance Company'') gave an irrevocable guarantee dt. 24th September, 1968 in favour of the purchasers which was furnished. The vendors handed over all the share scrips along with the blank transfer forms to the guarantor who were in charge of the transferring of the shares when the payment was received from the purchasers. The guarantor, in return, took counter-guarantee from the two brothers and their relatives. If any installment was not paid by the purchasers, the guarantor had to pay the same, and the shares acquired by such payment could be transferred in the name of any other person by the guarantor. The dividend received on shares, still not transferred, was payable to the vendor.

3. Common ground is that during the previous year ending December, 1969, the purchasers made payments of two installments, i.e., 1/5th of the sale consideration and that 1/5th number of shares of the vendors in the three companies each was transferred to the purchasers who received the dividend thereon, disclosed the same to be their income and were assessed accordingly. The remaining 4/5th of the vendor''s shareholdings in the three companies stood deposited with the insurance company in terms of the said agreement. The dividend received on that portion of shareholdings, which was in the custody for and on behalf of the vendors and was made over to them. Did the purchasers become owner of the entire shareholdings of the vendors including the remaining 4/5th portion during that previous year, was the controversy. According to the assessee, there was no actual transfer of all the shares under the sale agreement, and the transfer took place only at the time when the full consideration was paid for the concerned shareholdings. The insurance company was possessing the share scrips and the bank transfer forms only as an agent of the vendor. But that did not result in any effective single sale at very first stage.

4. The ITO held that it was a case of an absolute conditional sale, whereby the entire shareholdings at the price of Rs. 94.82 lakhs became the property of the purchases during the year under reference and, consequently, the entire dividend in respect of shares was taxable in the hands of the purchasers in moiety. The assessee preferred an appeal before the AAC who allowed the same by upholding the stand taken by the assessee. The Department approached the Tribunal. There was difference of opinion between two members. As a result, there was a reference to the third member. The third member agreed with the view that there was no completed sale of all the shares of the property, the property in the goods did not pass to the purchasers and, hence, entire dividend could not be taxed as income of the purchasers during the relevant period. Thus, by majority judgment, the Tribunal dismissed the appeal.

5. Now, it is well settled that under law "shareholder" means a person in whose name the shares stand in the register of company. IT is no one''s case that the shares in question stood in the name of the purchasers. As per s. 19 of the Sale

of Goods Act, property in the goods passes when it is intended to pass. It could not be said that the property in goods was intended to pass irrespective of date of payment of installments. Sale could not be held to be complete on the purchasers furnishing irrevocable guarantee from the insurance company. Insurance company, under the circumstances, held the shares in trust for vendors. Under specific terms of the agreement, the vendors had retained the right to receive dividend till such time as the installments were not fully paid. In this background, it is clear that dividend income could not become income of the purchasers.

6. Under the circumstances, both the questions are answered in the affirmative and in favour of the assessee. There will be no order as to costs.

