(1997) 01 SC CK 0020

In the Supreme Court Of India

Case No : Civil Apeal No.3384 of 1983

Commissioner of Income Tax APPELLANT

Vs

R. Lingmallu Raghukumar RESPONDENT

Date of Decision : 15-01-1997

Acts Referred:
Income Tax Act, 1961 — Section 2(47), 45, 47

Citation : (2001) 247 ITR 801

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Advocate : T.L. Vishwanatha Iyer, S. Rajappa and B.K. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal by the Revenue is directed against the judgment of the Andhra Pradesh High Court dated July 21, 1982 (see Commissioner of Income Tax, Andhra Pradesh Vs. L. Raghu Kumar, , in Referred Case No. 28 of 1977, whereby the following question of law referred to the High Court was answered against the Revenue and in favour of the assessee (page 676) :

"Whether, on the facts and in the circumstances of the case, the excess amount of Rs. 46,500 received by the assessee on retirement from the two partnership firms is assessable to capital gains ?"

2. The High Court has held that there was no transfer of any assets as contemplated by the expression "transfer" as defined in section 2(47) of the income tax Act. The High Court had placed reliance on the judgment of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Mohanbhai Pamabhai, , wherein it has been held that where a partner retires from a partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts in the manner prescribed by the relevant provisions of the partnership law there is no element of transfer of interest in the partnership assets by the retired partner to

the continuing partners. The said judgment of the Gujarat High Court has been affirmed by this court in Addl. CIT v. Mohanbhai Pamabhai, (1987) 165 ITR 166 (SC) . In view of the said judgment we find no merit in this appeal and the same is, therefore, dismissed. No order as to costs.

