(2000) 11 MAD CK 0013

In the Madras High Court

Case No : T.C. No. 787 of 1982 (Reference No. 524 of 1982) & Tax Case No. 787 of 1982 22 November 2000 A.Y. 1973-74

Commissioner of Income Tax APPELLANT

Vs

R. Ramachandran RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:
Income Tax Act, 1961 — Section 55(2)

Citation : (2001) 165 CTR 263

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Full Bench

Advocate : C.V. Rajan, for the Revenue S.A. Balasubramaniam, for the Assessee, for the Appellant;

Judgement

R. Jayasimha Babu, J.

During the assessment year 1973-74, the assessee sold 500 shares in Madras Motor and General Insurance Company Ltd., of which, the

assessee had acquired 25 shares prior to 1-1-1954, and in respect of which the assessee was entitled to opt for treating the fair market value as on

1-1-1954, as the cost of acquisition u/s 55(2) of the Income Tax Act. The assessee exercised the option. The assessee had received bonus shares

in the subsequent years which were relatable in part to the shares subsequently purchased by the assessee, and in part relatable to the shares held

prior to 1-1-1954. It is not in dispute that 17 bonus shares received in subsequent years are relatable to the 25 shares held by the assessee prior to

1-1-1954.

2. While computing the capital gains, the Income Tax Officer did not assign any value to the bonus shares. He however, adopted the cost as given

by the assessee for the other shares which was the statutory cost for 25 shares and the cost of acquisition of the shares purchased in subsequent

years. That order having been confirmed by the Commissioner (Appeals), the assessee appealed to the Tribunal which held that the bonus shares

were required to be assigned a value by spreading the cost of acquisition over the original shares and the bonus shares, but in respect of the shares

held prior to 1-1-1954, the cost of acquisition of shares could not be disturbed. The Tribunal also held that the actual cost of acquisition for the

shares held subsequent to 1-1-1954, should also be left undisturbed.

3. The Supreme Court in the case of Shekhawati General Traders Ltd. etc. Vs. Income Tax Officer, Company Circle-1, Jaipur, held that for the

purpose of determining the fair market value of the shares held prior to 1-1-11954, by an assessee, the subsequent issue of bonus shares in

respect of the shares so held is not to be taken into account. The court held that the fair market value of the shares held on 1-1-1954, cannot be

reduced by spreading that value over the shares held as on that date, and the shares subsequently received as bonus shares.

4. In the case of Escorts Farms (Ramgarh) Ltd. Vs. Commissioner of Income Tax, New Delhi, , it was held by the court that the bonus shares

cannot be regarded as having no value, or given their face value while determining the capital gain. It was held that the value of the bonus shares

has to be determined by spreading the cost of the old shares over the old shares and new shares. However, while so holding, the court

distinguished the case before it from that of Sekhawati General Traders (supra), as no question of considering the manner in which the statutory

cost of acquisition of shares held prior to 1-1-1954, arose for consideration in the case of Escorts Farms (supra). The principle laid down in the

case of Shekhawati General Traders (supra) was left undisturbed.

5. This court in the case of COMMISSIONER OF Income Tax, MADRAS Vs. T.V.S. and SONS LTD., held that when all the shares, the

original as also the bonus shares, are sold, there is no need for calculating the value of the bonus shares for determining the cost of acquisition. That

was not a case where the assessee had held shares prior to 1-1-1954, in respect of which he had opted to have the statutory cost assigned in

those shares.

6. It is clear that having regard to the law laid down in the case of Shekhawati General Traders (supra), that the value for the shares held prior to

1-1-1954, cannot be disturbed, the assessee having opted to have the fair market value of that asset as on 1-1-1954, as the cost of acquisition.

The value of the bonus shares subsequently received which are relatable to those shares cannot be regarded as being without any value. Their

value has to be determined by spreading that statutory cost over the 17 shares. Thus, while the 25 shares acquired prior to 1-1-1954, are to be

assigned the statutory cost as the cost of acquisition, the bonus shares acquired are also to be given a value by spreading that cost over the number

of shares. Insofar as the shares acquired subsequent to 1-1-1954, are concerned, the shares purchased, as also the bonus shares relatable thereto

are to be valued by spreading the cost of acquisition of the shares purchased over the shares so purchased, as also the bonus shares relatable

thereto. The Tribunal was not right in leaving undisturbed the cost of acquisition of the shares purchased after 1-1-1954.

7. The assessee through his counsel has placed before us a working of the values as by applying the method set out in the preceding paragraph.

The difference in the amount of the capital gain worked out in that manner, and the capital gain as determined by the Income Tax Officer is only

Rs. 155. In place of the amount determined by the Income Tax Officer, the amount of capital gain for the purpose of taxation shall be the sum of

Rs. 66,301, and the tax liability of the assessee is to be calculated accordingly. We make this direction as the working placed before us has been

accepted as correct by the revenue.

