

(1986) 01 PAT CK 0024
In the Patna High Court
Case No : Taxation Case No. 233 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Ram Saran Chopra

RESPONDENT

Date of Decision : 03-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 45

Citation : (1986) 52 CTR 165 : (1986) 158 ITR 1 : (1986) 27 TAXMAN 618

Hon'ble Judges : Uday Sinha, J; Nazir Ahmed, J

Bench : Division Bench

Advocate : B.P. Rajgarhir and S.K. Sharan, for the Appellant; L.N. Rastogi, L.N. Khanna and Jagdish Kumar, for the Respondent

Judgement

1. This reference u/s 256(1) of the Income Tax Act is concluded by the decision of the Supreme Court in Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, . The question referred to us for our opinion is as stated below:

"Whether, on the facts and in the circumstances of this case, the Tribunal were correct in law in holding that no capital gain arose to the assessee on transfer of the goodwill for a consideration of Rs. 50,000 because there was no cost of acquisition nor any cost in the improvement of that capital asset ?"

2. The assessment year in question before us is 1969-70. The assessee is an individual. He set up a proprietary firm in the name and style of M/s. Chopra Pharmacy in the town of Patna on July 13, 1964, His initial investment was Rs. 40,000. The assessee sold the proprietary firm on April 1, 1968, as a running concern for Rs. 80,000. This sum was made up as follows:

(i) Rs. 30,000 on account of stock ;

(ii) Rs. 50,000 on account of goodwill.

3. The sum of Rs. 50,000 on account of goodwill was added as income of the assessee treating it as capital gain. That is the bone of contention before us.

4. The Appellate Assistant Commissioner on appeal by the assessee held that the said amount of Rs. 50,000 could not be added in the taxable income of the assessee as it was not a capital gain. The Department being aggrieved by the order of the Appellate Assistant Commissioner filed an appeal before the Income Tax Appellate Tribunal, Patna Bench. The Appellate Tribunal upheld the order of the Appellate Assistant Commissioner. The Department did not take the verdict of the Appellate Tribunal lying down and got this reference made to this court as stated above.

5. Undisputed facts are that the proprietary firm had been established and nourished out of the personal exertion of the assessee. Thus no cost was involved in the acquisition of the goodwill. The question thus which arose upon the stand of the Department was whether capital gain can accrue where there has been no cost of acquisition of the goodwill. As stated earlier, this controversy has now been set at rest by the Supreme Court in the case of Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, . The Supreme Court held as follows in that case (headnote):

"What is contemplated by Section 48(ii) is an asset in the acquisition of which it is possible to envisage a cost : it must be an asset which possesses the inherent quality of being available on the expenditure of money to a person seeking to acquire it. None of the provisions pertaining to the head " Capital gains " suggests that they include an asset in the acquisition of which no cost at all can be conceived. When goodwill generated in a new business is sold and the consideration brought to tax, what is charged is the capital value of the asset and not any profit or gain."

6. The facts of this case are that the goodwill had been generated by the assessee in a new business. Thus, the goodwill which was transferred by the assessee did not entail any cost in the acquisition thereof. In that view of the matter, the consideration on account of goodwill could not have been brought to tax. We are, therefore, of the view that the Tribunal was correct in holding that no capital gain arose to the assessee on transfer of the goodwill for the consideration of Rs. 50,000 as there was no cost of acquisition nor any cost in the improvement of that capital asset.

7. The reference must, therefore, be answered in the affirmative, against the Revenue and in favour of the assessee. Since the matter in controversy has been settled by a decision of the Supreme Court subsequent to the reference, no case for award of costs is made out.

8. Let a copy of this order be transmitted to the Income Tax Appellate Tribunal, Patna Bench "A", through the Assistant Registrar, in terms of Section 260 of the Income Tax Act.