(1993) 08 GUJ CK 0016

In the Gujarat High Court

Case No : Income-tax Reference No. 231 of 1981

Commissioner of Income Tax APPELLANT

Vs

Sanmitra G. Shashtri RESPONDENT

Date of Decision : 04-08-1993

Acts Referred:
Income Tax Act, 1961 — Section 45, 48

Citation : (1994) 208 ITR 870

Hon'ble Judges : Y.B. Bhatt, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : B.J. Shelat, for the Appellant; N.R. Divatia, for the Respondent

Judgement

G.T. Nanavati, J.—The following two questions are referred to this court by the Income Tax Appellate Tribunal at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been right in law in holding that the transfer of one-half share in land owned by the assessee in the firm in which the assessee was the partner did not give rise to taxable capital gains ?

2. Whether, when a person brings non-monetary contribution as capital on joining a firm as a partner, there is no consideration receivable by him as a result of extinguishment of his interest in proprietary assets which are liable to capital gains u/s 45, read with section 48 of the Income Tax Act, 1961 ?"

2. In Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat, the Supreme Court has held (headnote) :

"When his personal assets merge into the capital of the partnership firm, a corresponding credit entry is made in the partner''s capital account in the books of the partnership firm, but that entry is made merely for the purpose of adjusting the rights of the partners inter se when the partnership is dissolved or the partner retires. It evidences no debt due by the firm to the partner. Indeed, the capital represented by the national entry to the credit of the partner''s account may be completely wiped out by losses which may be subsequently incurred by the firm, even in the very accounting year in which the capital account is credited. Having regard to the nature and quality of the consideration which the partner may be said to acquire on introducing his personal asset into the partnership firm as his contribution to its capital, it cannot be said that any income or gain arises or accrues to the assessee in the true commercial sense which a businessman would understand as real income or gain."

3. The Supreme Court further held that in such a case the partner cannot be said to have received consideration within the meaning of section 48 and, therefore, it cannot be said that any profit or gain accrued to him for the purpose of section 45 of the Act. Following that decision, both the questions are answered in the affirmative, that is, against the Revenue and in favour of the assessee. No order as to costs.

