
(1981) 02 CAL CK 0013

In the Calcutta High Court

Case No : Income-tax Reference No. 174 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Steel Group Ltd.

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Income Tax Act, 1961 — Section 45, 48, 55

Citation : (1981) 22 CTR 354 : (1981) 131 ITR 234 : (1981) 7 TAXMAN 295

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.L. Pal and Prabir Kumar Mujumdar, for the Appellant;P.K. Pal and J. Shah, for the Respondent

Judgement

Sudhindra Mohan Guha, J.—The question posed before us in this reference is as follows :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that in computing the income chargeable under the head "Capital gains" arising from the sale of original 1,22,400 shares of M/s. Coles Cranes of India Ltd., the cost of acquisition of the shares to be deducted u/s 48 of the Income Tax Act, 1961, should be taken at Rs. 10 per share and not Rs. 4.80 per share as taken by the Income Tax Officer ? "

2. The assessee was a limited company and the reference related to the assessment year 1972-73. The assessee-company was the owner of 1,22,400 shares of the face value of Rs. 10 each in M/s. Coles Cranes of India Ltd. which was acquired on 17th October, 1960, for Rs. 12,24,000 at the rate of Rs. 10 per share. On these shares, 1,32,600 bonus shares of the face value of Rs. 10 each, which ranked pari passu with the original shares, were issued on 24th March, 1970, free of cost. On 29th October, 1971, the assessee sold out the entire original 1,22,400 shares and 2,600 bonus shares for a total consideration of Rs. 17,35,000 (i. e., at Rs. 13.88 per share) to an Indian company, M/s. Tractors India Ltd. The assessee-company showed the capital gain on the sale of these

shares in the return as follows:

Rs.

(a)

Long-term capital gains On 1,22,400 shares @ Rs. 3.88 (Rs. 13.88-- Rs. 10) per share

4,74,912

(b)

Short-term capital gains On 2,600 bonus shares @ Rs. 13.88 per share

36,088

5,11,000

3. The ITO, however, while computing the capital gains held that the cost of acquisition of both the original and the bonus shares should be determined by spreading the cost of the original shares to both the original shares and the bonus shares together. The ITO, therefore, worked out the cost of acquisition of both the original shares and the bonus shares at Rs. 4.80 per share and worked out the capital gains, both long-term arising out of the sale of the original shares and short-term arising out of the sale of the bonus shares, at Rs. 9.08 (Rs. 13.88 minus Rs. 4.80) per share. In this way, the ITO determined the long-term capital gains at Rs. 11,11,392 and the short-term capital gains at Rs. 23,608.

4. The assessee-company went up in appeal before the AAC. The AAC, however, held that the cost of acquisition of the original shares should have been taken at Rs. 10 per share and, therefore, the long-term capital gains on the sale of 1,22,400 original shares should have been worked out at Rs. 3.88, that is (Rs. 13.88 minus Rs. 10) per share. The long-term capital gains were, therefore, reduced by the AAC to Rs. 4,74,912 as shown by the assessee-company.

5. The department came up in appeal before the Tribunal. It was submitted before the Tribunal on behalf of the department that since the bonus shares ranked *pari passu* with the original shares, the cost of bonus shares should have been worked out by spreading the cost of original shares over the original shares and the bonus shares collectively.

6. On behalf of the assessee, however, it was contended that in case the bonus shares were obtained by detriment to the value of the original shares, the cost of acquisition of the bonus shares should be worked out by spreading the cost of the original shares to the cost of the original shares and the bonus shares. But the cost of acquisition of the original shares should not be determined as in the case of bonus shares. Supporting the AAC, it was submitted before the Tribunal that the cost of acquisition of the original shares was rightly held by the AAC to be Rs. 10 per share which was the actual cost at which the shares were acquired by the assessee-company on 17th October, 1960, and the capital gains on the

sale of original shares on this basis were correctly determined by the AAC.

7. The Tribunal upholding the contentions of the assessee-company pointed out that the provisions of Section 55 of the I.T. Act, 1961, also gives support to the interpretation that the cost of acquisition means the amount paid by the assessee-company who is the present owner of the asset or by the previous owner on the date the asset was acquired. It was true that consequent on the issue of the bonus shares there was a fall in the price of the original shares but then there was the distinction between the cost of acquisition which referred to the price paid at the time of purchase and the value on a subsequent date as a result of some other factors, for example, issue of bonus shares, etc. While computing the capital gains, the Tribunal was concerned with the cost of acquisition. That was the price which was paid by the assessee for acquiring the capital assets on the date it was acquired subject to such adjustment as laid down u/s 55 if and when applicable and not that which may be the value of that asset on some other subsequent occasion. Thus, the Tribunal upheld the findings of the AAC.

8. In this case, we are concerned with Sections 45, 48 and 55(2) of the I.T. Act, 1961, and Mr. Balai Pal, learned advocate for the revenue, drew our attention to those sections. These relevant sections read as follows :

" 45. Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in Sections 53, 54, 54B and 54D, be chargeable to Income Tax under the head " Capital gains ", and shall be deemed to be the income of the previous year in which the transfer took place. "

"48. The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :--

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
- (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto. "

" 55. (2) For the purposes of Sections 48 and 49, "cost of acquisition", in relation to a capital asset,--

- (i) where the capital asset became the property of the assessee before the 1st day of January, 1954, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of January 1954, at the option of the assessee. "

9. The Supreme Court in the case of Shekhawati General Traders Ltd. etc. Vs. Income Tax Officer, Company Circle-1, Jaipur, , considered the principle of capital gains on the sale of original shares. In this case, the assessee had exercised the option of the fair market value of assets. The shares which had been sold by it in both the companies had indisputably become its property before the 1st day of

January, 1954. Therefore, all that had to be determined was the fair market value on the 1st day of January, 1954, of those shares. This was duly determined and it was not disputed that the determination was made according to the rates prevailing in the market on the aforesaid date by the ITO when he made his assessment order on July 20, 1964. Once the market value of the shares was ascertained or determined on the date given in Clause (i) of Section 55(2) that would be the cost of acquisition in relation to capital assets.

10. It was held by their Lordships that having regard to the provisions of Section 55(2) relating to the manner in which the cost of acquisition of a capital asset had to be determined for the purpose of Section 48 where the capital asset became the property of the assessee before the 1st day of January, 1954, the assessee had the option to fix the cost of the acquisition of the asset to it as the cost of acquisition for the purpose of Section 48 or the fair market value of the asset on the 1st January, 1954.

11. Thus, having regard to the principle enunciated by the Supreme Court that while computing the capital gains the assessee was concerned with the cost of acquisition, that is, the price which was paid by the assessee for acquiring the capital asset on the date it was acquired subject to such adjustments as laid down u/s 55, the assessee has no concern with what would be the value of that asset on some subsequent occasion, in other words, subsequent events need not be taken into consideration. The ratio of this decision was followed by a Division Bench of this court in the case of *Sutlej Cotton Mills Ltd. Vs. Commissioner of Income Tax*, , though there may be some factual discrepancy, with which we are not concerned. Mr. Balai Pal also referred to the decision of the Bombay High Court in the case of *W.H. Brady and Company Ltd. Vs. Commissioner of Income Tax, Bombay*, . But having regard to the ratio of the Supreme Court decision and the Calcutta High Court decision referred to above, this decision has got no application.

12. In the above premises, we answer the question in the affirmative and in favour of the assessee. Each party to pay and bear its own costs.

Sabyasachi Mukharji, J.

13. I agree.