
(2004) 08 AHC CK 0003

In the Allahabad High Court

Case No : Income-tax Reference No. 292 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Surendra Kumar Gupta

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 47

Citation : (2004) 191 CTR 538 : (2004) 270 ITR 325

Hon'ble Judges : R.K. Agarwal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Dhanjay Awasthi, for the Appellant;

Judgement

R.K. Agarwal, J.—The Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act" for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the transaction was not a "transfer" is legally correct ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in deleting the income from capital gains added by the Income Tax Officer ?"

2. The present reference relates to the assessment year 1976-77 for which the relevant previous year ended on March 31, 1976.

3. The late Shri Prabhu Dayal, the father of the assessee, and one Shri Radhey Shyam Agrawal, had jointly purchased a cinema building from M/s. Bombay Theatres Ltd., on February 20, 1958, for a sum of Rs. 1,22,400. Subsequently, they purchased machines and furniture, etc., also jointly and started running the cinema in partnership with each other with effect from November 2, 1958, each having a half share. On January 26, 1967, Shri Prabhu Dayal died. By the "will" of the same date of Shri Prabhu Dayal, all his properties passed on to the

assessee. The assessee and Shri Radhey Shyam Agrawal agreed to form a new partnership with effect from January 30, 1967. Accordingly, the business of Ajanta Talkies was run by a firm with effect from January 30, 1967, with the assessee and Shri Radhey Shyam Agrawal as equal partners. A partnership deed was duly executed on January 30, 1967.

4. With the passage of time differences cropped up between the two partners and both of them felt that it might no longer be possible to work in partnership with each other. They, therefore, decided to bring their relationship as partners to an end. Taking into account the nature of the business, it was considered by both the partners that it would be mutually beneficial if one of them took over the running business and paid to the other partners, the value of his share in terms of money. On the basis of this mutual understanding, the assessee first offered to purchase the half share of Shri Radhey Shyam Agrawal in the cinema building for Rs. 2,50,000. Accordingly, an agreement to sell was executed between the two partners on January 3, 1975. A cheque of Rs. 50,000 dated January 5, 1975, was given by the assessee to Shri Radhey Shyam Agrawal as earnest money. It appears that later Shri Radhey Shyam Agrawal has second thoughts and he made a counter offer to the assessee on February 23, 1975, offering to purchase (i) the share of the assessee in half of the immovable property of the firm for Rs. 2,60,000, and (ii) further to pay Rs. 5 lakhs for half share of the assessee in the movable properties of the firm. He also agreed to take over all the existing liabilities of the firm. The counter offer was accepted by the assessee and accordingly the earlier agreement to sell dated January 3, 1975, was cancelled. Rupees 50,000 given by the assessee to Shri Radhey Shyam Agrawal as earnest money was also refunded. On the other hand, Shri Radhey Shyam Agrawal gave to the assessee earnest money for Rs. 60,000 against the agreement to sell the immovable property of Rs. 2,60,000 and another Rs. 25,000 against the agreement to sell the movable properties for Rs. 5 lakhs. In the two deeds mentioned above, it was stated, inter alia, that the assessee had found the above values of his half share in the firm's movable and immovable properties very reasonable and that none had offered him a better price. In the agreement to sell the movables dated February 23, 1975, the following stipulation which is relevant for our purpose, appeared :

"jis din is ikrarname me likhi sari rakam minmukir ko mil jayega usi din usko building adi ka kabja va dakhil bhi de dena hoga tatha usi din se maujuda sirkatnama messrs ajanta talkies, allahabad bhi khatm samjhi jaigi."

5. As Rs. 25,000 had been paid as earnest money along with the execution of the above deed itself, the remainder to be paid in terms of the above agreement was Rs. 4,75,000 on the payment of which the firm was agreed to be dissolved.

6. Shri Radhey Shyam Agrawal could collect the aforesaid sum of Rs. 4,75,000 only by May 22, 1975. He paid the amount to the assessee on that date. With this the firm came to an end and as per the agreement dated February 23, 1975, referred to above, the assessee gave up all his rights in the movable properties

of the firm and also agreed to let his half share in the cinema building be utilised by Shri Radhey Shyam Agrawal for running the cinema. A sale deed regarding the share in the immovable property could not be executed (nor was it executed till the date of the order of the Tribunal) as the permission of the district authorities could not be obtained. To witness the happening of the above events, two deeds were simultaneously executed, namely, (i) dissolution deed, and (ii) sale deed, both on May 22, 1975, making inter-reference to each other. The dissolution deed was notified to the Registrar of Firms on May 22, 1975, and the sale deed was got registered on May 26, 1979.

7. On the above date, i.e., May 22, 1975, the balance-sheet of the firm had total assets of the value of Rs. 3,99,352 including the immovable properties (of Rs. 76,922) and the movables, and the capital accounts of the partners showed credit balances of Rs. 1,92,616 each. As against the above balance, the value of the share of the assessee in the firm's assets was worked out, as noted above at Rs. 7,60,000 (i.e., Rs. 2,60,000 for immovable property and Rs. 5,00,000 for movables). Actual money that passed on May 22, 1975, was, however, Rs. 4,75,000 only. Taking into account the earnest money of Rs. 25,000 given on February 23, 1975, the full agreed value of the movables, i.e., Rs. 5,00,000, thus passed from Shri Radhey Shyam Agrawal to the assessee by May 22, 1975; in the case of immovable property, however, only Rs. 60,000 by way of earnest money, passed on February 23, 1975. The remaining sum of Rs. 2 lakhs was outstanding on the date of the Tribunal's order and the immovable property had also not been transferred by that time. According to the Tribunal, the assessee still owned half share of the cinema building and got rent for it from Shri Radhey Shyam Agrawal, which was also offered for assessment as income from property year after year.

8. The Tribunal has held that it was a case of dissolution and one partner takes over the assets of the other and offered to the other the price of his share and no transfer of assets took place and, therefore, liability to capital gains did not arise. Apart from it, the Tribunal also referred to Clause (i) of Section 47 of the Act which specifically excludes such transactions from the purview of capital gains.

9. We have heard Shri Dhanjay Awasthi, learned counsel for the Revenue. Nobody has put in appearance on behalf of the assessee.

10. Learned counsel for the Revenue submitted that as one of the partners had paid a sum of Rs. 5 lakhs to the other partner, it was a case of transfer of asset and therefore assessable to the capital gain tax. From the finding recorded by the Tribunal it is seen that on account of mutual distrust between the partners a situation arose when the business of the firm could not be carried on smoothly and, therefore, both the partners had decided to dissolve the firm. Offer was given on dissolution by the assessee to take over the assets of the firm from the other partner for Rs. 2,50,000. However, the other partner offered a sum of Rs. 5 lakhs with certain conditions which was accepted by the assessee. Thus it is a case of dissolution of partnership firm and it did not result in any transfer of the

assets as understood in the common law. Further the deeds executed by the respective partners were only to safeguard the rights and interest and it does not reflect on the dissolution of the firm. Thus no capital gain arose.

11. In view of the foregoing discussion we are of the considered opinion that the Tribunal was justified in holding that the transaction was not a transfer and no capital gain accrued. We, therefore, answer both the questions of law in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.