
(1969) 02 CAL CK 0019

In the Calcutta High Court

Case No : Income Tax Reference No. 75 of 1964

Commissioner of Income Tax (Central)

APPELLANT

Vs

Associated Industrial Development Co. P. Ltd.

RESPONDENT

Date of Decision : 03-02-1969

Acts Referred:

Income Tax Act, 1922 — Section 12B, 12B(1)

Citation : (1969) 39 CompCas 401 : (1969) 73 ITR 50

Hon'ble Judges : Sabyasachi Mukharji, J; Deb, J

Bench : Division Bench

Advocate : D.K. Sen and B. Gupta, for the Appellant; D. Pal and A.K. Roy Chaudhuri, for the Respondent

Judgement

Sabyasachi Mukharji, J.—The assessee-company held 42,200 shares of the Chemical Manufacturing Co. of India Ltd. The shares had been purchased by the assessee for a total sum of Rs. 2,56,936. By a special resolution passed by the shareholders in an extraordinary general meeting on the 8th September, 1951, the said company, namely, the Chemical Manufacturing Co. of India Ltd., went into voluntary liquidation and a liquidator was appointed for the winding-up of the company. By 11th July, 1955, the liquidators had paid to the assessee a sum of Rs. 2,80,400 as dividends. This reference arises out of the assessment for the assessment year 1957-58, the previous year being the period from April 1, 1956, to March 31, 1957. On the 26th September, 1956, during the course of the previous year relevant for the present assessment, the assessee received a further sum of Rs. 21,100 from the liquidators as refund of capital at the rate of 50 nP. per share on 42,200 shares mentioned hereinbefore. The question is whether the said sum received by the assessee on the 26th September, 1956, is assessable as capital gains u/s 12B(1) of the Indian Income Tax Act, 1922.

2. Section 12B(1), as it stood at the material time and leaving aside the provisos which are not material for the purpose of this reference, is in the following terms:

" The tax shall be payable by an assessee under the head "Capital gains" in

respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place."

3. The Income Tax Officer held that, inasmuch as shares were held as capital assets and inasmuch as the entire cost of the acquisition of the shares had been recovered prior to the previous year relevant for this assessment year, this additional receipt of Rs. 21,100 on 26th September, 1956, attracted the provisions of Section 12B(1) of the Indian Income Tax Act, 1922. There was an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner set aside the order of the Income Tax Officer holding that no amount was received by the assessee in the accounting period under consideration. There was a further appeal by the revenue authorities before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal observed to the following effect:

" The relinquishment of a thing implies renunciation or abandonment thereof which is a voluntary act. Liquidation of company, on the other hand, involves the extinguishment of the rights of the shareholders in its shares. When an asset or any right therein is extinguished in the hands of a person, it is not correct to say that such person had relinquished it. It may be noted here that in the Income Tax Act, 1961, Parliament, obviously, alive to this distinction, enlarged the scope of Section 45 for the assessment of any profits or gains arising from the " transfer " of capital asset by defining in Section 2(47) the word " transfer " to include " the sale or relinquishment of the asset or the extinguishment of any rights therein or the compulsory requisition thereof under any law."

4. In that view of the matter the Tribunal was unable to accept the proposition that the said sum received by the assessee attracted the provisions of Section 12B(1) of the Indian Income Tax Act, 1922.

5. On an application being made u/s 66(1) of the Indian Income Tax Act, 1922, the Tribunal has referred to this court the following question : Whether, on the facts and in the circumstances of the case, the sum of Rs. 21,100 represented profits or gains arising from relinquishment of capital assets within the meaning of Section 12B of the Indian Income Tax Act, 1922, as it stood at the material time and was as such liable to tax as capital gains ? "

6. It is important to remember that a share in a company is the expression of a proprietary relationship, the shareholder is the proportionate owner of the company but he does not own the company's assets which belong to the company as a separate and independent legal entity. A share represents a bundle of rights. On liquidation, voluntary or compulsory, the holder's ownership over those rights are neither extinguished nor obliterated, only the contents of those rights and the manner of their exercise become altered. That being the effect of liquidation in the facts and circumstances of this case, we do not think that there

was either a sale or exchange or relinquishment or transfer of the capital asset as mentioned in Section 12B of the Indian Income Tax Act, 1922, in order to make the sum of Rs. 21,100 assessable as capital gains. There is, however, another aspect of the matter. It appears that the company went into liquidation voluntarily on 8th September, 1951. Section 12B(1) as it stood at the relevant time indicates that in respect of any profit or gain arising from the sale, exchange, relinquishment or transfer of the capital asset effected after 31st March, 1956, such profits would be deemed to be income. Even if it was possible to accept the argument that by liquidation there was relinquishment of the rights of the shareholder such relinquishment or transfer took place prior to 31st March, 1956. , We have, however, indicated our view that there was neither relinquishment nor transfer nor sale nor exchange of any asset in this case. In any view of the matter we are of the opinion that the provisions of Section 12B(1) cannot be attracted to make the sum of Rs. 21,100 assessable.

7. In the above view of the matter we uphold the decision of the Tribunal though on a different ground. The question referred to this court must, therefore, be answered in the negative and against the revenue. The Commissioner of Income Tax will pay the costs of this reference.

Deb, J.

8. I agree.