
(1985) 03 MAD CK 0013
In the Madras High Court
Case No : T.C.P. No. 449 of 1984

D. Padmanabhan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-03-1985

Acts Referred:

Income Tax Act, 1961 — Section 263

Citation : (1985) 156 ITR 751

Hon'ble Judges : N.A. Sathar Sayeed, J;G. Ramanujam, J

Bench : Division Bench

Advocate : P.P.S. Janardhana Raja, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Ramanujam, J.—In this petition filed u/s 256(2) of the Income Tax Act, 1961, the assessee seeks a direction from this court to the Tribunal

to refer the following question to this court :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Commissioner of Income Tax had jurisdiction

to act u/s 263 of the Income Tax Act, 1961, as it could be said that prima facie the assessment order was erroneous in law and prejudicial to the

interests of the Revenue ?

2. However, after a due consideration of the facts of this case, we are not satisfied that there is any justification to direct a reference. The assessee

in this case had acquired 493 shares of M/s. Coimbatore Pioneer Mills Limited on April 1, 1963, of which 55 shares were acquired at the rate of

Rs. 136 per share and 150 shares at the rate of Rs. 131 per share. He also acquired on March 31, 1972, 58 shares of which 43 shares were

purchased at the rate of Rs. 100 per share and 15 shares at the rate of Rs. 137

per share. Later, in the year 1974, he had acquired 756 bonus shares. Thus the assessee held in all at the beginning of the assessment year 1979-80, 1,512 shares. He sold the said entire shareholdings on September 29, 1978, at Rs. 1,96,560. The assessee claimed before the Income Tax Officer that the total cost of the shares was Rs. 3,90,582 on the basis of their market value as on January 1, 1964, and he disclosed a loss of Rs. 1,94,292 on the sale of the shares. Later, the assessee revised the calculation and worked out the capital gains at Rs. 1,124 by claiming the substituted cost at Rs. 258.50 per share as on January 1, 1964, in respect of only 756 shares which were acquired before January 1, 1964. The Income Tax Officer in his original assessment determined the cost of acquisition of the shares based on the market value of the shares as on January 1, 1964. The Commissioner of Income Tax finding that the order of the Income Tax Officer determining the cost of acquisition of all the shares on the basis of the market value as on January 1, 1964, to the prejudice of the Revenue, initiated proceedings u/s 263 of the Income Tax Act and after giving show-cause notice to the assessee, determined by his order dated December 22, 1982, the total cost of acquisition of the shares at Rs. 1,60,640. In doing so, the Commissioner of Income Tax substituted the market value as on January 1, 1964, only for 493 shares said to have been acquired on April 1, 1968, at the partition, and in respect of 263 shares which he later acquired at their actual cost. In respect of the bonus shares, the Commissioner of Income Tax took the value as "nil". In this view, the Commissioner of Income Tax directed the Income Tax Officer to compute the capital gains by adopting the cost of acquisition of the shares at the figure Rs. 1,60,640, as against the cost adopted by the Income Tax Officer originally at Rs. 1,95,426.

3. Against the said order of the Commissioner of Income Tax passed u/s 263 of the Act, the assessee went in appeal before the Tribunal contending that the Commissioner of Income Tax was wrong in holding that in computing the capital gains, no cost should be taken for the bonus shares, and that the said view is contrary to the view taken by the Calcutta High Court in Commissioner of Income Tax (Central-II) Vs. General Investment Co. Ltd., , according to which the bonus shares should be valued by spreading the cost of the original shares over the original shares

and the bonus shares. It was also contended by the assessee before the Tribunal that if the bonus shares should be held to have cost nothing to the

assessee, then no capital gains is chargeable in respect of the same according to the decision of the Supreme Court in CIT v. B. C. Srinivasa

Chetty [1980] 128 ITR 294. The assessee also questions the jurisdiction of the Commissioner of Income Tax to initiated proceedings u/s 263 of

the Act.

4. The Tribunal, after dealing with the rival contentions, held that is the order of the Income Tax Officer in adopting the market value as on January

1, 1964, uniformly for all shares, that is, for the original as well as bonus shares, is prejudicial to the Revenue, the Commissioner of Income Tax

had jurisdiction to invoke section 263 of the Act. The Tribunal, however, felt that the Commissioner of Income Tax had exceeded his jurisdiction in

giving a direction to the Income Tax Officer to take the cost of acquisition at Rs. 1,60,640, for the Commissioner of Income Tax has taken the

value of the bonus shares to be ""nil"" which according to the assessee is erroneous. The Tribunal, therefore, felt that the question as to how the

bonus shares are to be valued and whether the bonus shares are all matters to be decided by the Income Tax Officer to whom the matter has been

remitted by the Commissioner of Income Tax. As a matter of fact, the Tribunal, in the concluding partition of its order, had observed as follows :

We, therefore, while upholding the jurisdiction of the Commissioner of Income Tax u/s 263, would modify his direction and instead of directing

the Income Tax Officer to adopt the cost of acquisition in the manner stated by him would set aside the assessment and direct the Income Tax

Officer to redetermine the capital gains in accordance with law after giving an opportunity to the assessee and considering his objections.

5. Having regard to the said order of the Tribunal which specifically enables the assessee to put forward all the contentions before the Income Tax

Officer, we do not think there is any justification to give a direction to the Tribunal to refer the question set out above.

6. In view of the fact that the determination of the cost of acquisition of all the shares held by the assessee on the basis of the market value as on

January 1, 1964, being prejudicial to invoke section 263. A mere look at the order of the Income Tax Officer would indicate that the computation

of the cost of acquisition of shares acquired after January 1, 1964, is on erroneous basis. Therefore, the Tribunal is justified in upholding the jurisdiction of the Commissioner of Income Tax u/s 263 of the Income Tax Act. We are not, therefore, directing a reference in this case. The petition is dismissed. There will, however, be no order as to costs.