(1986) 02 MAD CK 0020

In the Madras High Court

Case No : Tax Case No''s. 402 and 403 of 1978 & Tax Cases No''s. 402 and 403 of 1978

Dasaprakash Bottling Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 04-02-1986

Acts Referred:
Income Tax Act, 1961 — Section 41(2)

Citation : (1986) 159 ITR 690

Hon'ble Judges : K. Venkataswami, C.J;M.N. Chandurkar, J

Bench : Division Bench

Advocate : P.P.S. Janardhana Raja, for Subbaraya Iyer, for the Appellant; J. Jayaraman and N.V. Balasubramaniam, for the Respondent

Judgement

Chandurkar, C.J.—The assessee entered into an agreement of sale on February 2, 1971, with Chennai Bottling Company under which the

assessee sold the running concern by the name of Dasaprakash Bottling Company for a sum of Rs. 32,70,898. The actual money received by the

vendor was Rs. 8,25,000 and the purchaser took over liabilities of the value of Rs. 24,45,898. Admittedly, the value of tangible assets was as

under :

Rs.

Value of current assets 9,81,402

Buildings 6,48,749

Machinery 6,25,821

22,55,972

Thus, there was an overall surplus of Rs. 10,69,346 received by the assessee.

2. Out of the above said amount, the Income Tax Officer worked out the profit u/s 41(2) of the Income Tax Act, 1961, at Rs. 2,01,841. In

respect of the balance amount of Rs. 8,67,505, the assessee''s case was that this was relatable to the transfer of goodwill and, therefore, not

taxable as capital gains in view of the decision of this court in COMMISSIONER OF Income Tax, MADRAS Vs. K. RATHNAM NADAR., .

The Income Tax Officer, however, proceeded to tax this surplus amount on the authority of the decision of the Gujarat High Court in

Commissioner of Income Tax, Gujarat Vs. Mohanbhai Pamabhai, . Thus, a sum of Rs. 8,67,505 was brought to tax under the head ""Capital

gains"".

3. On appeal by the assessee, the Appellate Assistant Commissioner held that the sum of Rs. 8,67,505 was not assessable. He also set aside the

finding in respect of the profit computed u/s 41(2) of the Income Tax Act, 1961. An appeal by the Revenue came to be filed against this order of

the Appellate Assistant Commissioner that the sums of Rs. 8,67,505 and Rs. 2,01,841 could not be brought to tax. However, the claim for

addition of the amount of Rs. 2,01,841 was not pressed before the Tribunal. The Tribunal was, therefore, concerned only with the nature of the

receipt of Rs. 8,67,505.

4. The Tribunal on a consideration of the possibility of the concern yielding profits took the view that after a period of five years, the business

would yield approximately a profit of Rs. 30,000 per year to the purchaser which was not very appreciable. The Tribunal, therefore, found that

one of the assets transferred was land which would not increase in value over some years in future and looking into the circumstances, 20 per cent.

of the overall surplus of Rs. 10.69 lakhs could be attributed to goodwill, considering also that a popular soft drink was being marketed. Following

the decision of this court in COMMISSIONER OF Income Tax, MADRAS Vs. K. RATHNAM NADAR., , the Tribunal held that the sum was

not liable to tax on capital gains. Thus, deducting a sum of Rs. 2,00,000 out of the sum of Rs. 8,67,505 the Tribunal took the view that the balance

of Rs. 6,67,505 had to be assessed as capital gains. This amount, according to the Tribunal, did not relate to any immovable property and

necessarily it would relate to movable assets and, therefore, the full amount of Rs. 6,67,505 had to be considered for the assessment for the

assessment year 1971-72. The Tribunal observed that it would become necessary to apportion this amount between long-term capital gains and

short-term capital gains.

5. The Revenue and the assessee were both aggrieved by this view of the Tribunal and two questions have, therefore, been referred to this court,

the first at the instance of the assessee and the second at the instance of the Revenue. The two questions are as follows :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that an amount of Rs. 6,67,505 related to

surplus arising out of consideration attributable to sale of movables and had to be apportioned between gains attributable to short-term capital

assets and long-term capital assets and was assessable as capital gains for the assessment year 1971-72 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that out of the surplus arising in pursuance of

transactions emanating from the agreement of sale dated February 2, 1971, an apportionment could be made to goodwill ?

6. Learned counsel appearing on behalf of the assessee has contended that the entire amount of Rs. 8,67,505 should have been treated as

consideration received for the goodwill and consequently it was liable to be excluded for the purpose of computing the tax payable by the

assessee. While urging that the entire amount was liable to be excluded for the purpose of computing tax, it was not possible for the learned

counsel to substantiate as to how in respect of a concern which had been running in loss during the five years preceding the year of assessment and

almost during the entire period since it was started, such a large amount could be claimable by way of goodwill. Annexure ''A'' to the Appellate

Assistant Commissioner''s order shows that in the accounting period from August 1, 1966, to March 31, 1967, there is a loss of Rs. 1,04,884 and

this loss has gone up in the accounting period 1967-68 by Rs. 2,19,350. In the year 1969-70, no depreciation has been claimed, but it appears

that if depreciation was claimed, there would also have been a larger loss. In the next two years, there are losses of Rs. 1,06,717 and Rs.

1,23,439. Undoubtedly, all the authorities have proceeded on the footing that there was some goodwill transferred and it appears that the

agreement also refers to the transfer of goodwill. The only relevant circumstance for the purpose of ascertaining the value of the goodwill would,

therefore, be some expected profits in the future which the Tribunal has estimated at Rs. 30,000 per year on the basis of the figures in annexure

''A'' referred to above. The Tribunal obviously was not left with any other alternative, but to make an estimate both in respect of the future profits

and consequently the approximate value of the goodwill. It is not urged that the estimate made in respect of the future profits is erroneous.

Ultimately, therefore, if this estimate made by the Tribunal of about 20 per cent. of the overall surplus is not shown to be patently unjustifiable, then

that estimate must necessarily be accepted as a finding in this reference. There is, therefore, no reason to interfere with the finding recorded by the

Tribunal that the approximate value of the goodwill should be computed at a round figure of Rs. 2,00,000. Once this finding is confirmed,

necessarily the consequential finding that the balance of Rs. 6,67,505 will have to be treated as attributable to the sales of movable assets liable to

be apportioned between long-term capital assets and short-term capital assets cannot be interfered with.

7. In the view which we have taken, both the questions have to be answered in the affirmative. Accordingly, question No. 1 is answered in the

affirmative and against the assessee. Question No. 2 is answered in the affirmative and against the Revenue. In view of the equal success and

failure in these two references, there will be no order as to costs in both the cases.

