(2001) 04 KL CK 0004

In the High Court Of Kerala

Case No : Report No''s. 40 and 51 in C.P. No''s. 2 and 29 of 1995 and Report No. 58 in C.P. No. 19 of 1992

In Re: Venad Pharmaceuticals and Chemicals Ltd. (In Liquidation)

Date of Decision : 09-04-2001

Acts Referred:
Companies Act, 1956 — Section 529A

Citation : (2001) 107 CompCas 516

Hon'ble Judges : K.V. Sankaranarayanan, J

Bench : Single Bench

Advocate : K. Moni, for the Appellant; M.P.R. Menon, for the Respondent

Judgement

K.V. Sankaranarayanan, J.—By these three reports, the official liquidator has sought directions as regards the liability for capital gains tax as regards sales of properties of the companies under liquidation, effected by the official liquidator. He has also sought directions for payment of advance tax.

2. Notice has been given to learned Central Government standing counsel representing the Income Tax Department. I have heard learned counsel for the official liquidator and counsel representing the Income Tax Department.

3. Learned standing counsel for the Income Tax Department has pointed out that a Division Bench of this court in Income Tax Officer Vs. Official Liquidator, Swaraj Motors (P.) Ltd. (In Liquidation), has held that capital gains tax will be part of the cost charges and expenses incurred in the winding up and must be paid on a preferential basis. However, in the reports learned counsel for the official liquidator has pointed out a number of instances where the company court has held that the Department will not have any priority for the liability for the capital gains tax.

4. To me, it appears that capital gains is part of the incidence of the sale effected by the official liquidator of the property belonging to the company just like a liability for stamp duty, registration charges or the like. It is not a debt due by the company as on the date of commencement of winding up or the order for

winding up. The decision of the Division Bench cited above is also a binding precedent. However, it is pointed out by learned counsel for the official liquidator that a learned single judge of the Bombay High Court has in Syndicate Bank and another Vs. The Official Liquidator and others, distinguished the Division Bench judgment of this court and preferred to follow the single Bench decision reported in In Re: Giovanola Binny Ltd. (In Liquidation);, . In the above decisions, the learned judges have relied on the new provision in Section 529A of the Companies Act, 1956, added in 1985 which was not available when the Division Bench judgment was rendered. But Section 529A only puts the claims of workmen pari passu with the secured creditors. It can only be as regards the assets that are available for distribution which naturally must be after providing for the expenses in connection with the winding up. So the decision of the Division Bench that capital gains tax must be taken as part of the winding up expenses still holds good. However, in the light of the later decision in In Re: Giovanola Binny Ltd. (In Liquidation);, and also other instances pointed out by the official liquidator, it is considered necessary to have an authoritative decision by a Division Bench. So the matter has to be placed before a Division Bench for decision.

5. The Registrar will place the matter before the Chief Justice for appropriate orders.

