
(1998) 02 MAD CK 0061

In the Madras High Court

Case No : Tax Case No. 1086 of 1981 (Reference No. 578 of 1981)

S. Rangarajan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Citation : (2000) 241 ITR 593

Hon'ble Judges : Janarthanam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : V. Ramakrishnan, for T. Raghavan, for the Appellant; Chitra Venkataraman, for the Respondent

Judgement

Janarthanam, J.—In this tax case, at the instance of the assessee, Sri S. Rangarajan, Madras, the Tribunal referred the following question of

law for the opinion of this court :

Whether, on the facts and circumstances of the case, in computing the capital gains arising out of the transfer of property received by the assessee

from the company on reduction of its share capital, the assessee was entitled to substitute the market value of the property as the cost of

acquisition in the place of the amount of reduction in capital in lieu of which the property was transferred to the assessee ?

2. The assessee is an individual. For the assessment year 1972-73, corresponding to the previous year ended March 31, 1972, the Income Tax

Officer had to determine the capital gains arising out of the transfer of a property known as ""Sabarmathi"", which was sold on October 13, 1971,

for Rs. 2,80,000.

3. The assessee had acquired this property from Kasthuri Estates Private Limited

in 1963-64 on the reduction of the share capital of the company.

4. The assessee claimed that the cost of acquisition of this property for the purpose of computing the capital gains must be taken as the market

value of the property at the time when he got it by reduction in the share capital.

5. But the Income Tax Officer took the book value of the property as the cost of acquisition at Rs. 77,765 and computed the capital gains.

6. The Appellate Assistant Commissioner confirmed the computation made by the Income Tax Officer.

7. On further appeal, it was found that in the case of another shareholder of Kasthuri Estates Private Limited, the Appellate Tribunal has held by its

order dated May 26, 1979, in I. T. A. Nos. 115 and 116/Mds. of 1978-79 that in view of the conditions laid down by this court allowing the

reduction in the share capital of the company, only the exact amount reduced could be returned to the shareholder and, therefore, the value of the

property received by the assessee in lieu of reduction in share capital could not be anything more than the amount stated to be returned to him.

Hence, the Appellate Tribunal held that the assessee was not entitled to substitute the market value of the property in the place of the value for

which the property was transferred to the assessee for the cost of acquisition in computing the capital gains.

8. Arguments of learned counsel, Mr. V. Ramakrishnan, representing Mr. T. Raghavan, learned counsel appearing for the assessee, and Mrs.

Chitra Venkataraman, learned counsel representing the Revenue, were heard. It is not as if the question arising for consideration in this action did

not arise for consideration anterior in point of time and the plain fact is that such a question did arise for consideration before a Division Bench of

this court, in the assessee's wife's case, namely, Shantha Rangarajan and others Vs. Commissioner of Income Tax, . In that case, the assessee, G,

was a shareholder. The company effected a reduction in its share capital on May 8, 1962, after getting the requisite sanction of the High Court. An

amount of Rs. 1,06,650 was to be returned to the assessee in consequence of the reduction of capital in respect of 135 equity shares held by him.

Towards this reduction of capital and return of money under the order of the High Court, the assessee obtained cash of Rs. 60,683 and some

immovable properties, whose book value was Rs. 45,967 but whose market value

was Rs. 5,29,754. During the previous year relevant to the assessment year 1971-72, the assessee sold one of the properties for a sum of Rs. 1,30,000. He returned capital gains on the above sale by deducting the market value of the property at Rs. 75,000. The Income Tax Officer, however, relying on the fact that the value of the assessee's shareholding in respect of 135 shares was reduced by Rs. 1,06,650 and in returning the reduced capital, a sum of Rs. 60,683 was adjusted in cash, computed the cost of the property at Rs. 19,550 on a proportionate basis. This was upheld by the Tribunal.

9. On a reference, this court held that the property had been obtained in lieu of share amount on account of reduction of paid up capital and while valuing the property, its book value at that time had been taken. Since the transfer was from the company to its shareholders it was open to them to take a decision in their favour and transfer the asset based on the book value only. This, however, could not go further and entitle them to further benefits. Hence, there could be no justification for holding that for the property which had been sold any other value could be taken except that which had been shown in the resolution of the company transferring the property as the value of acquisition of the assets.

10. The above quoted decision is applicable on all fours to the facts of the instant case. On the rationale or reasoning projected by the said decision, we are of the view that the question posed for consideration has to be necessarily answered in favour of the Revenue and against the assessee and, accordingly, we answer the question.

10. In fine, this tax case fails and the same is dismissed. There shall, however, be no order as to costs, on the facts and circumstances.