(1998) 02 MAD CK 0026

In the Madras High Court

Case No : Reference No. 578 of 1981 13 February

S. RANGARAJAN APPELLANT

Vs

COMMISSIONER OF Income Tax RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Citation : (1999) 107 TAXMAN 28

Hon'ble Judges : Subbulakshmy, J;Mrs. Subbui Akshmy, J;Janarthanam, J

Bench : Full Bench

Advocate : V. Ramakrishnan and T. Raghavan and Mrs. Chitra Venkataraman,, for the appearing parties;

Judgement

Janarthanam, J.

In this tax case, at the instance of the assessee, Shri S. Rangarajan, Madras, the Tribunal referred the following question for the opinion of this

Court:

Whether, on the facts in the circumstances of the case, in computing the capital gains arising out of'' the transfer of property received b '' v 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 31-3-1972, the Income Tax Officer

had to determine capital gains arising out of the transfer of a property known as ''Sabarmathi'', which was sold on 13-10-1971 for Rs. 2,80,000.

3. The assessee had acquired this property from Kasthuri Estates (P.) Ltd. 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 tile purpose of computing the. capital gains must he 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 look 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 (P.) Ltd., the Tribunal has held by its order dated 26-

5-1979 in IT Appeal Nos. 115 and 116 (Mad.) of 1978-79 that in view of the conditions laid down by this Court allowing the reduction in the

share capital of a company, Only the exact amount reduced could be returned to the shareholder and therefore, the value of the property received

by the assessee in of reduction in share capital could not be anything more than the aniount stated to be returned to him. Hence, the Tribunal held

that the assessee was not entitled to substitute the market value of the property in place of the value for which the property was transfer erred to

the assessee for the cost of acquisition in computing the capital gains.

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

Mrs. Chitra Venkataraman, the 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 8-5-1962 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 sun] 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 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 lo the facts of the instant case. On the rationale or reasoning projected by the said

decision, we are of the view that the question posted for consideration has to be necessarily answered in favour of the revenue and against the

assessee and, accordingly, we answer the question.

11. 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.