

(1994) 09 MAD CK 0009

In the Madras High Court

Case No : Tax Case No"s. 246, 247, 288 to 299 and 464 of 1981 and Reference No"s. 98, 99, 112 to 122, 123 and 178 of 1981

Shantha Rangarajan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Citation : (1996) 85 TAXMAN 617

Hon'ble Judges : Thanikkachalam, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : V. Ramakrishnan, T. Raghavan and T.K. Seshadri, for the Appellant; C.V. Rajan, for the Respondent

Judgement

Gulab C. Gupta, J.—In these tax cases, at the instance of the assessee, the Tribunal referred the following common question for our

opinion:

Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that for the purpose of computing the capital gain, the

cost of acquisition of the asset transferred should be taken as the actual cost paid by the assessee for the asset and not its market value on the date

of acquisition of the asset by the assessee by reduction of share capital?

These tax cases relate to various assessment years. The case of the assessee, Shri N. Govindarajan alias N. Ravi (in Tax Case No. 297 of 1981),

for the assessment year 1971-72 may be taken as a typical case, which is common for all the assessee. He was a shareholder in Kasturi Estates

(P.) Ltd. The company effected a reduction in its share capital on 8-5-1962, after getting the requisite sanction of the High Court. The High Court,

by order dated 20-4-1962, sanctioned the reduction of capital of the company as resolved on and effected by the special resolution passed at an

extraordinary general meeting of the said company held on 30-11-1961, to reduce the share capital of the said company. Shri N. Govindarajan

alias N. Ravi held 135 equity shares of Rs. 1,000 each in Kasturi Estates (P.) Ltd. Since the company effected reduction of its capital by Rs. 790

per share, the value of the assessee's holding was reduced by Rs. 790 X 135, i.e., Rs. 1,06,650. 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 as per the order of the High Court referred to above, the assessee obtained cash of Rs. 60,683 and the following assets. The book value

of the assets came, it would appear, to Rs. 45,967 (Rs. 1,06,650 minus Rs. 60,683) while the market value as per wealth-tax assessment is at the

figures against each item:

Rs.

1. Land with shed attached Cathedral Road 12.659 98,875

grounds

2. Land with outhouses measuring 8.2131 grounds in 1,16,480

Mowbrays Road land 20.545 grounds

3. Farm house and land 21 grounds 659 sq. ft. 2,41,419

4. Kasturi House and land area 5,255 grounds (Ooty) 75,000

2. The market value of the assets, thus, totalled up to Rs. 5,29,754. That is to say for giving the shareholder the sum of Rs. 45,967, the company

gave assets worth a book value of the same figure but whose market value was Rs. 5,29,754. During the previous year relevant to the assessment

year 1971-72, the assessee sold the property at Ooty, item No. 4 above, 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 ITO, however, relying on the fact that the value of the assessee's shareholding in

respect of the 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 Ooty property at Rs. 19,550 on a proportionate basis. The capital gain was thus worked out at Rs. 1,05,485. On appeal, the AAC

confirmed the ITO's working. Likewise, for the assessment year 1974-75 in the case of the present assessee, and in respect of similar transactions relating to the sale of immovable properties received by the shareholders on the reduction of capital which took place in 1962, the capital gains were computed by the ITO on the basis of the value of the holdings of the shareholders as reduced. On appeal, the AAC confirmed the ITO's orders in the case of all the shareholders.

3. The various assessees filed appeals to the Tribunal against these orders of the AAC. Before the Tribunal, it was contended on behalf of the

assessee that for computing the capital gains, the value of an asset has to be taken at its cost and the cost plus improvement has to be deducted

from the sale price. The market value alone was the figure to be adopted for the above purpose. In a transaction of this type, the cost of land as

such could not be ascertained in the original assessment in the case of Shri G. Narasimhan (deceased) and his legal representatives. The ITO

adopting the cost at the market value, had assessed the difference between the market value and the reduced value of the shares as the assessee's

income for the assessment year 1963-64. However, this addition to the total income of the shareholders was cancelled by the Tribunal and the

High Court in Commissioner of Income Tax Vs. G. Narasimhan (Decd) (by LRs), . The assessees contended that, hence, the capital gains should

be adopted only by adopting the market value of the assets as in 1963 and also after taking into consideration the improvements. After hearing

both the sides, the Tribunal held that from either point of view, the capital gains as computed by the ITO cannot be said to be incorrect. Since a

consolidated figure obtains as the value of the land, buildings, farm house, etc., the ITO has adopted a proportional method for arriving at the value

of the capital asset sold from year to year in the case of each of these assessees. In the absence of any other better method to compute this figure

of capital gains, the method adopted by the ITO has to be upheld.

4. There is no dispute that the assessees being shareholders of the company, Kasturi Estates (P.) Ltd., got the property in question in lieu of their

share of the amount on account of the reduced paid-up capital. It is also not disputed that while valuing the property in question, the book value of

the property was taken at that time. Since the property was passing from the

company to the shareholders, this is permissible and, hence, no objection could be taken to this method of valuation and passing on the property to shareholders. The question requiring consideration is whether the properties that were given to the assesseees are incapable of being valued and, hence, its market value would be the only proper value.

5. The submission of the learned counsel for the assesseees based on G. Narasimhan's case (supra) is that there is no transfer from the company to its shareholders in a case like the present one. The learned counsel for the revenue has, however, disputed the aforesaid fact and relying on the decision of this Court in Commissioner of Income Tax Vs. India Company Private Limited, submitted that a transfer was involved. The case in G. Narasimhan's case (supra) dealt with the shareholders acquiring capital assets from the company consequent upon reduction of paid-up share capital. Since the shareholders were being subjected to capital gains tax the question arose for the consideration of this Court whether there was any transfer by them. It is well-settled that unless the property is transferred from one person to another, the transferor would not be liable to pay tax on capital gains. 11 was in that context that this Court held that the shareholders have not transferred anything. It is on the contrary the company which has transferred a part of the share capital which they had earlier subscribed. In the absence of transfer by the shareholders, it was held that capital gains tax was not attracted. This case cannot, therefore, be an authority for the proposition that even where shareholders having received property from the company transferred the same to a third person the capital gains tax would not be attracted. Indeed, in such a case, the transfer would be by the shareholders to a third person and would attract the provision. The decision in India Co. (P.) Ltd.'s case (supra) was the decision where the company had transferred shares to its shareholders, which shares were subsequently sold in the market and the value received was shown in the accounts of the company. In such a situation, it was held that the shares received by the shareholders having been sold in the market, there is a transfer and, hence, the provisions relating to capital gains tax would be attracted. These decisions clearly indicate that in a case where a company having decided to reduce its paid-up share capital transfers a part of its assets in lieu of the amount to which it has become liable

to its shareholders, a transfer would necessarily be involved and would attract the capital gains tax. That is perhaps the reasons why the assesseees

in this case have themselves offered to pay capital gains tax on subsequent transfer of the said capital asset to a third person. This Court would,

therefore, find the decision of the assesseees not only just and proper but also in accordance with law.

6. The question, however, remains whether the value of the asset under consideration is really unascertainable only because its book value was

taken into consideration at the time of transfer to the present assesseees. This Court finds no justification for such a submission. 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 book value only.

This, however, cannot go further and entitle them to benefits by changing the position as aforesaid. In the instant case, the value of the property in

question has been clearly identified and stated in the resolution dated 8-5-1962. The argument of the learned counsel for the assessee that they

have only got what they have actually paid and, therefore, there is no cost of acquisition cannot really be accepted to a sum of Rs. 790 per share.

Taking advantage of their own decision that this amount can be paid either in cash or in kind they have given its equivalent in terms of tangible

assets. Under the circumstances, it is clear that they are getting the property in lieu of money to which they were really entitled as a result of

reduction in paid-up capital. It is, therefore, not a case where the assesseees have got what they have paid to the company. It is on the contrary a

case where they have got a tangible asset in lieu of money which they had paid and to which they have become entitled. In this connection,

reference be made to the decision of this Court in Additional Commissioner of Income Tax Vs. Govindoss Purushothamdoss, . It was a case

involving a partnership and the partners deciding to obtain an asset in lieu of the amount to which they had become entitled. The assets were valued

on the basis of the book value and the question arose whether the book value or the market value of those assets should be taken for computing

the capital gains tax. This Court, on an examination of all the facts and circumstances of the case and relying upon the Supreme Court decision in

Kalooram Govindram Vs. Commissioner of Incometax, Madhya Pradesh, Nagpur, , held that the value shown at the time of transfer of the assets

would be the value relevant for the purpose. It is true that this case related to a partnership-firm and the cases before us deal with a case of redaction of paid-up share capital in a company under the company law. But, the question involved in both the cases is the same, i.e., where the value of the asset shown at the time of its transfer to the present assessee should be the proper value for the purpose of determining the capital gains tax or it should be the market value of the said asset. The principle contained in this case would, in our opinion, squarely govern this case and hence, there would be no justification for holding any other value except the one which has been shown in the resolution of the company transferring the property as the value of acquisition of the asset.

7. The learned counsel for the assesseees has relied on a decision of the House of Lords in *Exparte, Westburn Sugar Refineries Ltd.* [1951] 1 All.

ER 881 to submit that reduction of paid-up share capital necessarily means not the book value of the assets received but the market value of the

said asset. This was a case where the company has decided to reduce its paid-up share capital by two shillings, but, instead of returning the

amount in cash, decided to part with these two shillings investment in another company. The question that came up for consideration of the House

of Lords in such a situation was whether the value of the asset was only two shillings or its market value and their Lordships have held that it was

really the market value. The said decision does not lay down any law of universal application and in our opinion it rests on the facts of its own case.

What the company had decided to transfer was its two shillings interest in another company. The words "two shillings interest" mean not only two

shillings but all that was represented in the other company by the said amount which must necessarily be more than two shillings. The resolution in

the instant case is different, and, therefore, this judgment will not help the assesseees. In the instant case, the resolution is clear and specific and

permits refund of Rs. 790 per share to the shareholders. It is true that this amount can be returned either in cash or in kind. But, this would not

extend the value of the amount to be returned. In case the amount had been returned in cash and not in kind the assesseees could not have claimed

interest in the company equivalent to Rs. 790 per share and would have remained satisfied only by getting Rs. 790 per share only. This really has

happened in the instant case insofar as the cash amount given to them is concerned. In such a situation, the interpretation given by the House of Lords cannot be applied in the instant case. In view of our discussion aforesaid, we do not find any illegality in the method of assessment adopted by the authorities including the Tribunal. The question, therefore, is answered in the affirmative and against the assessee. No costs.