

(1998) 07 MAD CK 0013

In the Madras High Court

Case No : TC No. 104 of 1985 28 July 1998 A. Y. 1976-77

SHISHIR KUMAR R. MEHTA

APPELLANT

Vs

COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Citation : (1999) 154 CTR 70

Hon'ble Judges : R. Jayasinha Babu, J; R. Jayasimhe Babu, J; Mrs. A. Subbulakshmy, J; A. Subbulakshmy, J

Bench : Full Bench

Advocate : P. P.S. Janarthana Raja, for the Assessee and Mrs. Chitra Venkatraman, for the Revenue, for the Appellant;

Judgement

Mrs. A. Subbulakshmy, J.

The assessee is an individual. The assessment year is 1976-77. The assessee purchased 150 shares of Bank of Baroda on 17-1-1972 for Rs.

15,042.70. The Bank of Baroda was amalgamated with M/s Mahindra Ugin Steel Company Ltd. on 1-7-1974. The shareholders of the Bank of

Baroda were given option either to accept the shares of the transferee" company or cash at the rate of Rs. 140 per share. The assessee exercised

the option to receive cash and accordingly he received Rs. 21,450 on 24-10-1975. The difference between the amount and the cost of acquisition

of those shares was assessed as short-term capital gains by the Income Tax Officer. The assessee claimed that no capital gain is involved as it was

a case of amalgamation. The claim so made was rejected by the Income Tax Officer. Aggrieved by that order, the assessee preferred appeal

before the Appellate Assistant Commissioner, who allowed the appeal. The Appellate Assistant Commissioner found that the transaction in the

assessee's case did not fall within any limbs of section 2(47) of the Income Tax Act and the transaction did not involve transfer or sale or exchange

or relinquishment. On appeal to the Tribunal, the Tribunal set aside the order of the Appellate Assistant Commissioner and restored the order of

the Income Tax Officer.

2. At the instance of the assessee this court by its order directed the Tribunal to state a case and refer the following question of law for opinion u/s

256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act):

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the money received by the applicant, as a

shareholder of a company, from the amalgamated company in lieu of shares held in amalgamating company involves transfer within the meaning of

section 2(47) of the Income Tax Act, 1961, and consequently liability to capital gains arises therefrom, and in holding that the transaction in the

case of applicant did not fall within the exemption contained in section 47(vii) of the Income Tax Act, 1961?

3. Counsel for the assessee submitted that the receipt of cash by the assessee in lieu of 150 shares of Bank of Baroda, the amalgamated company

clearly falls within the ambit of section 47(vii) and the assessee is entitled to the benefit of that section. Counsel for the revenue pointed out that the

assessee having exercised his option to receive cash in lieu of right to receive the shares of the amalgamating company, he cannot seek the benefit

of section 47(vii) of the Act and the assessee is liable to capital gains. Section 47(vii) of the Act reads as follows:

Nothing contained in section 45 shall apply to the following transfers:

any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company, if-

the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company; and

the amalgamated company is an Indian company;

Counsel for the revenue further pointed out that the transaction of the assessee amounts to transfer in terms of section 2(47) of the Act. Section

2(47) of the Act reads as follows:

transfer"', in relation to a capital asset, includes,

the sale, exchange or relinquishment of the asset; or

the extinguishment of any rights therein., or

the compulsory acquisition thereof under any law;

4. Counsel for the assessee stressed that the shareholders of Bank of Baroda were given option either to accept the shares of the amalgamated

company or cash at the rate of Rs. 140 per share and the assessee exercised the option to receive cash and accordingly, he received the cash and

so, he is entitled to exemption u/s 47(vii) of the Act. The assessee has received cash in lieu of the shares of the amalgamated company. The Apex

Court has laid down with regard to the meaning of "transfer" and scope of section 2(47) of the Act in *Kartikeya V. Sarabhai Vs. The*

Commissioner of Income Tax, . It has been laid down in that decision that,

Section 2(47) of the Income Tax Act, 1961, defines ""transfer"" in relation to a capital asset. It is an inclusive definition which, inter alia, provides

that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. It is not necessary for a capital gain to

arise, that there must be a sale of a capital asset. Sale is only one of the modes of transfer envisaged by section 2(47) of the Act. Relinquishment of

the asset or extinguishment of any right in it, which may not amount to a sale, can also be considered as a transfer and any profit or gain which

arises from the transfer of a capital asset is liable to be taxed u/s 45. A company, u/s 100(1)(c) of the Companies Act, 1956, has a right to reduce

the share capital and one of the modes which can be adopted is to reduce the face value of the preference shares. Section 87(2)(c) of the

Companies Act, inter alia, provides that ""where the holder of any preference share has a right to vote on any resolution in accordance with the

provisions of this subsection, his voting right on a poll, as the holder of such share, shall, subject to the provisions of section 89 and sub-section (2)

of section 92 be in the same proportion as the capital paid up in respect of the preference share bears to the total paid-up equity capital of the

company"". Hence, when as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference

shareholder to the dividend on his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished

proportionately to the extent of reduction in the capital. Such reduction of the

right in the capital asset would clearly amount to a transfer within the meaning of that expression in section 2(47) of the Income Tax Act, 1961.

The facts of that case as set out in the headnotes in the report

The appellant had purchased 90 non-cumulative preference shares, each of the face value of Rs. 1,000 at a price of Rs. 420 per share, in a

company. In 1965, a sum of Rs. 500 per preference share was paid off to the appellant upon a reduction of the share capital of the company

under s. 100(1)(c) of the Companies Act. This was done by reducing the face value of each share from Rs. 1,000 to Rs. 500 and by paying off

Rs. 500 in cash. As a result thereof the appellant became a holder in respect of 90 non-cumulative preference shares of the value of Rs. 500 per

share, in place of being the holder of shares of the face value of Rs. 1,000 per share. There was a further reduction of the face value of the shares

which took place in the year 1966. At the extraordinary general meeting held on 10-1-1966, a special resolution was passed by the company by

virtue of which it reduced its liability on the preference shares from Rs. 500 per share to Rs. 50 per share by paying off in cash, a sum of Rs. 450

per share. Thus, the share held by the appellant which was originally of the face value of Rs. 1,000 became share of the face value of Rs. 50 only.

This reduction had taken place in two stages, firstly, when the face value was reduced from Rs. 1,000 to Rs. 500 per share and, secondly, when

the face value was reduced from Rs. 500 per share and, secondly, when the face value was reduced from Rs. 500 per share to Rs. 50 per share.

The appellant had originally purchased the preference shares of the face value of Rs. 1,000 per share at a price of Rs. 420 per share. At the time

of the first reduction, he got back Rs. 500 per share in cash. At the time of the second reduction, the appellant got a further sum of Rs. 450 per

share in cash. The Income Tax Officer was of the opinion that a sum of Rs. 450 per share, which was received by the appellant on the second

occasion, was exigible to be subjected to levy of capital gains tax. The Tribunal upheld this order. The High Court held that the appellant had made

capital gains on the reduction of preference share capital and the same was exigible to capital gains tax.

Section 45 of the Income Tax Act reads as follows:

Capital gains(1) Any profits or gains arising from the transfer of a capital asset

effected in the previous year shall, save as otherwise, provided in sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H be chargeable to Income Tax under the head ""Capital gains"" and shall be deemed to be the income of the previous year in which the transfer took place.

5. Section 2(47) of the Act provides that relinquishment or extinguishment of any rights in the capital asset amounts to transfer of a capital asset. In the instant case, the assessee has received cash in lieu of 150 shares and on receipt of that cash, there is extinguishment of the rights of the assessee in those shares. Sale is one of the modes of transfer envisaged by section 2(47) of the Act. Extinguishment of the assessee's right is a transfer and any profit or gain which arises from such transfer is liable to be taxed, u/s 45 of the Act. The assessee who has received money representing his share from the amalgamated company has received that money in satisfaction of the right which belonged to him by virtue of holding his share and it amounts to capital gain. The assessee is liable to pay the tax on capital gain.

6. We answer the question of law in the affirmative in favour of the revenue. No costs.

OPEN