

(2000) 08 P&H CK 0244

High Court Of Punjab And Haryana At Chandigarh**Case No:** Income-tax Case No. 58 of 1999

Commissioner of Income Tax

APPELLANT

Vs

R.K. Jain

RESPONDENT

Date of Decision: Aug. 16, 2000**Acts Referred:**

- Income Tax Act, 1961 - Section 143(3), 256(2), 52, 52(1), 52(2)

Citation: (2001) 249 ITR 782 : (2001) 118 TAXMAN 367**Hon'ble Judges:** Nirmal Singh, J; G.S. Singhvi, J**Bench:** Division Bench**Advocate:** R.P. Sawhney, assisted by Rajesh Bindal, for the Appellant; None, for the Respondent

Judgement

G.S. Singhvi, J.

This is a petition u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), for directing the Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi (hereinafter described as "the Tribunal"), to refer the following questions for the opinion of this court :

"(a) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Section 52 of the Income Tax Act, 1961, was not applicable to the facts of the case ?

(b) Whether, on the facts and in the circumstances of the case, the Tribunal was right in reducing the sale value per share to Rs. 15.75 as against prevailing market rate per share at Rs. 26 for the purpose of computing the capital gains tax ?"

2. It is borne out from, the record that the respondent-assessee filed a return on July 31, 1987, declaring his income as Rs. 2,25,990. Later on, he filed the revised return showing the income as Rs. 1,85,990. The Assessing Officer did not accept his return and by an order dated July 21, 1989, passed u/s 143(3) of the Act, he assessed the

income of the respondent to be Rs. 4,26,450 by taking into consideration the capital gain on the sale of shares as Rs. 3,62,400 by adopting the rate of Rs. 26 per equity share on the sale of 22,650 shares of Nuchem Plastics Ltd. as against the sale rate of Rs. 15.75 per share shown by the assessee. The Commissioner of Income Tax (Appeals) allowed the appeal filed by the respondent and directed the Assessing Officer to recompute the chargeable capital gain by adopting the sale price of the shares at the rate of Rs. 15.75 instead of Rs. 26 per share. The Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) and dismissed the appeal filed by the Revenue.

3. We have heard Shri R. P. Sawhney and perused the record.

4. While dealing with the issue of capital gain on the sale of shares, the Tribunal took notice of the finding recorded by the Commissioner of Income Tax (Appeals) and proceeded to affirm the same by making the following observations :

"4.2 On first appeal the learned Commissioner of Income Tax (Appeals) examined the history of the case and observed that the assessee was formerly the general manager in Nuchem Plastics and was the only male member representing his family in Nuchem Plastics in which the other related family members were also directors. He further observed that there were disputes between various groups in the management and control of Nuchem Plastics as a result of which the assessee was thrown out of the management in May, 1979. He also observed that the wife of the assessee was also removed from the board of directors and that the assessee and his family members severed all connections with Nuchem Plastics and its management. The learned Commissioner of Income Tax (Appeals) further observed that there was a prolonged litigation and that the assessee was deprived of all remuneration from Nuchem Plastics after May, 1979, and even the dividends on the shareholding of Nuchem Plastics were not paid to him by the management and that the suits were filed in courts. Ultimately, there was a settlement in November, 1985, according to which it was mutually agreed that all the shares held by the assessee, his wife and his children in the equity capital of the company would be sold by them and they would divest themselves of any interest in the company. It was agreed that the shares held by the assessee and other family members would be sold in a phased manner during the period of 12 months at a fixed price to be arrived at on an equitable basis. The said price was worked out at Rs. 13 per share. However, it was ultimately agreed that the shares would be sold at a fixed price of Rs. 15.75 per share over a period of 12 months. The learned Commissioner of Income Tax (Appeals) also noted the agreement of settlement regarding 15 matters pending in civil and criminal courts relating to disputes between the assessee and Nuchem Plastics Ltd. He also observed that it was agreed between the parties that all possible steps would be taken to have the civil and criminal suits compromised/settled. He also noted that in pursuance of the said settlement the entire block of 3,88,150 equity shares of Nuchem Plastics which included 1,79,300

shares held by the assessee in his individual capacity were agreed to be transferred at Rs. 15.75 per share. He also observed that out of 1,79,300 shares held by the assessee, 1,54,650 shares were transferred in the year 1986-87 and the remaining 24,650 shares were transferred in the year 1987-88. In view of the said background history, learned counsel for the assessee submitted that the sale price adopted by the Assessing Officer at Rs. 26 per share was very much inflated and there was no justification for adopting the said price, when the actual sale was made at Rs. 15.75 per share. He also submitted that the observations of the Assessing Officer that the entire transaction was coloured and collusive was uncalled for and the same was not borne out from the facts and circumstances mentioned above. The learned Commissioner of Income Tax (Appeals) considered the said submissions and for the reasons given in the order and after examining the provisions of Section 52 of the Income Tax Act concluded that the sale made by the assessee was a distress sale and that the assessee was not connected directly or indirectly with any of the transferee companies within the meaning of Section 52(1). He also held that there was no evidence or material in the possession of the Assessing Officer to even remotely suggest that the transfer was made with the object of avoidance of capital gains or that the sale consideration actually received by the assessee was more than the sale consideration declared by him so as to attract the provisions of Section 52(2). He also observed that the price of shares of Nuchem Plastics quoted at Rs. 26 in the stock exchange was only a notional price at which only some stray and occasional sales were made in the stock exchange in small and insignificant lots of 50 and 100 shares. He also observed that the mere fact that the value of the said shares for wealth-tax purposes was taken at Rs. 26 in the wealth-tax assessments of some of the other shareholders would not justify the enhancement of sale price of shares for the purposes of capital gains because for wealth-tax purposes the notional value of shares can be taken on a particular date, whereas for the purposes of capital gains only the sale price is to be taken. He also held that the transaction of sale of shares at Rs. 15.75 was bona fide in view of the fact that the transferee companies to whom the shares were sold at declared sale price in their audited balance-sheet and the price of 67,000 shares declared at Rs. 15.75 by Nuchem India Pvt. Ltd. was also accepted by the same Assessing Officer in the assessment of Nuware India Pvt. Ltd. for the year 1986-87. Accordingly, the learned Commissioner of Income Tax (Appeals) directed the Assessing Officer to recompute the chargeable capital gains by adopting the sale price of shares at Rs. 15.75 per share. In the assessment year 1987-88 also the learned Commissioner of Income Tax (Appeals) gave the same direction."

5. Shri Sawhney argued that the Commissioner of Income Tax (Appeals) as well as the Tribunal have gravely erred in holding that the sale price of the shares was Rs. 15.75 per share. He submitted that others had sold shares at the rate of Rs. 26 per share and, therefore, there was no valid ground to accept the plea of the respondent that he had sold the shares at the rate of Rs. 15.75 per share.

6. In our opinion, the concurrent finding recorded by the Commissioner of Income Tax (Appeals) and the Tribunal on the issue of the sale price of the shares sold by the respondent does not suffer from any legal infirmity which may justify issuance of a direction to the Tribunal to make reference to this court. The Commissioner of Income Tax (Appeals) had dealt with the issue at length and observed that the assessee had been forced to sell the shares and further that the transactions involving the sale of small number of shares cannot be made basis for rejecting his submission that the shares had been sold at the rate of Rs. 15.75 per share. The Tribunal expressed its unequivocal agreement with the findings of the Commissioner of Income Tax (Appeals) and we do not see any reason to upset the same.

7. For the reasons mentioned above, we hold that no question of law arises for consideration in this case and the petition is liable to be dismissed. Ordered accordingly.