

(2003) 130 TAXMAN 778

High Court Of Kerala

Case No: IT Appeal No. 121 of 2000 30 September 2002

SN. Zubin George

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Sept. 30, 2002

Citation: (2003) 130 TAXMAN 778

Hon'ble Judges: G. Sivarajan, J; C.N. Ramachandran Nair, J

Bench: Full Bench

Advocate: P. Balakrishnan, for the Assessee P.K.R. Menon and George K. George, for the Revenue, for the Appellant;

Judgement

G. Sivarajan, J.

The matter arises under the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The assessee is the appellant. The assessment year concerned is 1990-91.

2. The brief facts which are necessary for decision of this case are as follows : The assessee was a partner in a firm by name M/s. Mettallieds

doing business in steel. The said firm was doing agency business for the company M/s. Pennar Steels Ltd. The firm had made deposit with the

company for the purpose of agency and later when the company, Pennar Steels Ltd. became a public limited company the deposit standing to the

credit of the firm in the accounts of the company was transferred to the credit of the partners of the firm towards share deposit account on 31-3-

1988. The assessee was issued share certificates with distinctive numbers on 31-5-1988. Out of the said shares the assessee had sold 5200 share

during the previous year relevant to the assessment year 1990-91 and declared the gains arising from the transfer of shares as long term capital

gains in the return of income. However the assessing authority assessed the same to capital gains treating it as a short term capital gains, as

according to him the shares were allotted to the assessee only on 31-5-1988. In appeal by the assessee the Deputy Commissioner (Appeals),

Thiruvananthapuram allowed the appeal directing the computation of capital gains treating it as a long term capital asset. He took the view that the

shares must be deemed to have been allotted on 31-3-1988. In appeal by the department the Income Tax Appellate Tribunal set aside the order

of the first appellate authority and restored the order of the assessing authority.

3. Sri P. Balakrishnan, learned counsel for the assessee submitted that since the amounts standing to the credit of the firm in the accounts of the

company was transferred to the credit of the partners of the firm towards share deposit accounts on 31-3-1988, evidenced by a certificate issued

by the company it has to be taken that the shares were issued to the appellant on 31-3-1988. He further submitted that if the date of acquisition of

the share is taken as 31-3-1988 the sale of the shares made by the appellant during the previous year is liable to capital gains treating it as a long

term capital gains.

4. Sri P.K.R. Menon, learned senior Central Government standing counsel for the revenue submitted that the shares were issued by the company

to the appellant only on 31-5-1988 and there is no material or evidence produced by the assessee to show that the allotment of the shares were

made by the company on any date prior to 31-3-1988. The senior counsel accordingly submitted that the assessing authority as well as the

Tribunal were perfectly justified in taking the view that the capital gains assessment has to be made treating the asset as a short term capital asset.

5. We have perused the order of the Income Tax Appellate Tribunal as well as the order of the assessing authority. We find that the Tribunal has

rightly held that the assessee obtained legal title to the shares only when the share certificate was issued by the company specifying the shares with

distinctive numbers. The Tribunal has found that there is no evidence to show that those shares were in existence prior to 31-5-1988. Even if the

money belonging to the appellant was appropriated to the share deposit account of the company that by itself will not amount to allotment of shares

for shares can be issued only after the company passes a resolution deciding to allot the shares. The appellant could not establish that the shares

were allotted to the appellant earlier than 31-5-1988. As rightly pointed out by the Tribunal the view of the first appellate authority that the

assessee should be construed as having acquired the shares on 31-3-1988 cannot be sustained. We fully endorse the view of the Tribunal that the

appellant got the shares which is the subject matter of the capital gains tax only on 31-5-1988, i.e., the date at which the share certificates are

issued to the appellant.

6. In this case the share certificates were issued to the assessee on 31-5-1988. In that view of the matter, according to us, the Tribunal was

perfectly justified in holding that the capital gains have to be assessed on the transfer of the shares by the assessee treating it as a short-term capital

gains. There is no merit in this appeal. It is accordingly dismissed.