Ana Labs Vs The Deputy Commissioner of Income Tax

Court: Andhra Pradesh High Court

Date of Decision: Dec. 9, 2014

Acts Referred: Depositories Act, 1996 â€" Section 10
Income Tax Act, 1961 â€" Section 158BD, 2, 45, 45(1), 45(4)

Citation: (2015) 371 ITR 295 : (2015) 229 TAXMAN 210

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: A.V. Krishna Kaundinya, Advocate for the Appellant; S.R. Ashok, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.
This appeal is filed by the Assessee feeling aggrieved by the order, dated 31.10.2003, passed by the Hyderabad

Bench A of the Income Tax Appellate Tribunal in IT(SS)A No. 74/Hyd/2002.

2. The appellant is a partnership firm. It was undertaking the activity of analyzing chemical compounds and pollutants. The firm is part of group of

establishments, by name Bhagavati Ana Labs Limited. A search was conducted in the parent organization on 30.07.1998. On the basis of that, a

show cause notice was issued to the appellant on 25.11.1998 under Section 158BD of the Income Tax Act (for short the Act). The appellant was

required to file the returns for the block period 1988-89 to 1997-98. In compliance with the notice, the appellant submitted returns showing nil

income. The Assessing Officer processed the same and passed an order, dated 26.12.2000, taking the view that the appellant sold its assets,

worth Rs. 33,02,349/-; the actual sale value thereof is Rs. 1,12,93,389/- and that it is liable to pay the capital gains tax on Rs. 79,91,040/-. It was

held that the transaction is covered by Section 45(4) of the Act. Aggrieved by that, the appellant filed an appeal before the Commissioner of

Income Tax (Appeals). The appeal was rejected through order, dated 27.02.2002. Thereafter, the appellant filed IT(SS)A No. 74/Hyd/2002

before the Tribunal. That was dismissed by the Tribunal on 31.10.2003 and it was held that even if the transaction does not fall under Section

45(4) of the Act, it would get attracted by Section 45(1) of the Act.

3. Sri A.V. Krishna Kaundinya, learned Senior Counsel for the appellant, submits that the view taken by the Assessing Officer or the Tribunal

cannot be sustained in law. He contends that though the assets were transferred by the firm, the consideration in the form of transfer of shares was

paid to the partners and the net result was that the appellant did not receive any consideration at all. He contends that it was not even the case of

the Assessing Officer that Section 45(1) of the Act gets attracted and once the Tribunal found that there was no distribution of assets contemplated

under Section 45(4) of the Act, the matter ought to have been left at that. It is also pleaded that the makeover of assets from the firm to its own

sister company cannot be treated as transfer, within the meaning of Section 48 of the Act.

4. Sri S.R. Ashok, learned Senior Standing Counsel for the respondent, on the other hand, submits that this is not a case where the appellant firm

stood merged with the transferee company and, on the other hand, it is a clear case where the assets of the firm were sold to a company, after

dissolution. He submits that the consideration for the assets, transferred by the appellant was payable to it; and only by way of an internal

arrangement, the consideration, in the form of shares was paid to the respective partners, in accordance with their shares in the firm. He submits

that all the authorities have analyzed the facts correctly on the basis of the record and applied the relevant principles of law.

5. The basic facts are not in dispute. Notice under Section 158BD of the Act was issued to the appellant on 25.11.1998 and in response to that, a

return with nil income was filed. It is in the course of processing of the return, that it was found that the appellant sold its assets on 05.05.1995 in

favour of a company. Capital gains tax in relation to the said transaction was not paid on the ground that the transferee company has only allotted

some shares to the partners of the firm and no transfer as such, has taken place. Section 45 of the Act reads as under:

Section 45. 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, 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.

(1A) Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any money or other

assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of-

(i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or

(ii) riot or civil disturbance; or (iii) accidental fire or explosion; or

(iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war), then, any profits or gains arising

from receipt of such money or other assets shall be chargeable to income-tax under the head Capital Gains and shall be deemed to be the income

of such person of the previous year in which such money or other asset was received and for the purposes of Section 48, value of any money or

the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a

result of the transfer of such capital asset.

(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a

capital asset into, or its treatment by him as, stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the

previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the

asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the

transfer of the capital asset.

(2A) Where any person has had at any time during the previous year any beneficial interest in any securities, then, any profits or gains arising from

transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of

the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed

to be the registered owner of securities by virtue of sub-section (1) of Section 10 of the Depositories Act 1996, and for the purpose of-

(i) Section 48; and

(ii) Proviso to Clause (42A) of Section 2, the cost of acquisition and the period of holding of any securities shall be determined on the basis of the

first-in-first-out method.

(3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not

being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be

chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in

the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration

received or accruing as a result of the transfer of the capital asset.

(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other

association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the

income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair

market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the

transfer...

6. From a perusal of this, it becomes clear that the obligation to pay capital gains tax arises once, a citizen or assessee transfers a capital asset,

owned by him. Certain exceptions are provided for it and the appellant is not able to bring its case within the purview of those exceptions.

7. As regards the plea of the appellant that the consideration for the assets was paid in the form of shares to the respective partners, the Assessing

Officer took the view that the obligation to pay capital gains tax arose on account of the transfer of capital by way of distribution of capital assets,

on the dissolution of the firm. That view was upheld by the Commissioner. The Tribunal, however, held that the sale took place, before the

dissolution of the firm and it is not a case of distribution of assets, contemplated under Section 45(4) of the Act. The argument on behalf of the

appellant that once the case does not fall under Section 45(4) of the Act, the matter must be left at that, cannot be accepted. The finding that there

was no distribution of assets does not lead to a conclusion that there is no transfer at all, particularly when it is not even disputed that the sale as

such has taken place, with the participation of the appellant.

8. The second ground urged by the appellant is with reference to the manner of payment of consideration. It does not make much of difference as

to whether the consideration paid in the form of money or otherwise or whether it was paid to someone other than the transferor; in the context of

levy of capital gains tax. Either the transferor may receive the entire consideration directly or may instruct the transferee to pay the consideration to

a third party. Either way, it would be payment to the transferor, from the point of view of Section 45 of the Act. Added to that, the consideration

may be in terms of money, or in the form of an alternative property, or shares of the transferee company. What becomes the substratum, in this

regard, would be the consideration, in terms of money value. Once the money value of the asset is fixed, the tax is to be paid thereon

notwithstanding the fact that the actual consideration was paid in different form, albeit, to a third party.

9. In the instant case, the consideration in the form of allotment of shares was paid to the partners of the appellant on its instructions. There was no

direct transaction between the partners on the one hand and the transferee company, on the other.

10. An attempt is made to apply the concept underlying Clause (xiii) of Section 47 of the Act. Firstly, the provision was not in vogue in the relevant

assessment year. Secondly, assuming that the concept was in the offing and in a given case, it may be applied if the facts support. The case of the

appellant does not fall into that. It was not a case of succession of the firm by the appellant firm by the transferee company, much less there was

any exercise of corporatisation or demutualization, which are essential to attract Clause (xiii) of Section 47 of the Act. The appellant is not able to

demonstrate that the figures mentioned by the Assessing Officer are incorrect.

11. We do not find any basis to interfere with the order under appeal.

12. The appeal is accordingly dismissed. There shall be no order as to costs.

13. The miscellaneous petitions, if any, filed in this appeal shall also stand disposed of.