Commissioner of Income Tax Vs Central India Industries Ltd.

Court: Calcutta High Court

Date of Decision: Feb. 28, 1978

Acts Referred: Income Tax Act, 1922 â€" Section 12B(2)
Income Tax Act, 1961 â€" Section 52(1)

Citation: (1978) 113 ITR 326

Hon'ble Judges: Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

Bench: Division Bench

Advocate: Balai Pal and Ajit Sengupta, for the Appellant;R.N. Bajoria and S.K. Bagaria, for the Respondent

Judgement

Sabyasachi Mukharji, J.
We are concerned in this reference with the assessment year 1960-61, the relevant previous year being the

financial year ending on the 31st March, 1960. The assessee had shown a profit of Rs. 15,571 on sale of investment and this found place in its

profit and loss account. When the Income Tax Officer went into the question of levying capital gains on these transactions, the assessee requested

substitution of the fair market value of the shares as on the 1st day of January, 1954, under the second proviso to Sub-section (2) of Section 12B

of the Indian Income Tax Act, 1922, in place of cost price. The Income Tax Officer worked out the fair market value of the shares on the basis of

the break-up value as on the 1st January, 1954, at Rs. 14.62 per share. With regard to the sale price the Income Tax Officer found that the sales

were effected by the assessee at Rs. 2.25 per share. On the facts of the case, the Income Tax Officer held that the sales were to persons with

whom the assessee was directly or indirectly connected as the assessee was a Birla group of concerns and the sales were to the members of the

Birla family. In those circumstances, the Income Tax Officer came to the conclusion that, even though the shares were of very high value, the sales

were effected with the object of reducing the assessee''s liability u/s 12B of the Act. He, therefore, applied the first proviso to Section 12B(2) and

determined the fair market value of the shares on the break-up method at Rs. 14.45 per share. The result was a loss of Rs. 10,625, which was

held to be capital loss.

2. There was an appeal before the Appellate Assistant Commissioner and it is stated that the main grievance before the Appellate Assistant

Commissioner was that from the amounts of the break-up value of the shares the brokerage amount of 4 annas per share should also have been

allowed as a deduction from such sale price. According to the Appellate Assistant Commissioner, unless there was proof that the amount claimed

as brokerage had actually been spent in connection with the sale of the share, it was hardly possible to hold that the amount so claimed was an

allowable deduction. The Appellate Assistant Commissioner, therefore, agreed with the Income Tax Officer that capital loss at Rs. 10,625 was

properly worked out.

3. There was a further appeal to the Tribunal and it was urged before the Tribunal that the first proviso to Section 12B(2) had no application and,

alternatively, in arriving at the sale price, deduction should be given for the brokerage on the sale of the shares. The Tribunal was of the opinion that

proviso to Section 12B(2) of the Indian Income Tax Act, 1922, was applicable only if: (i) the person acquiring the share, that is, the purchaser, is

one with whom the assessee is directly or indirectly connected ; and (ii) the Income Tax Officer has reason to believe that the sale, that is, the only

type of transaction relevant here, was effected with the object of avoidance or reduction of liability under this section. It was urged before the

Tribunal on behalf of the assessee that there could not be and was no direct or indirect connection between the assesses, a limited company, and

the purchasers, the individuals. The Tribunal, for the purpose of considering the argument of the revenue, assumed in favour of the revenue that the

shares were sold to persons with whom the assessee was directly or indirectly connected. The Tribunal, however, was of the view that the two

conditions were cumulative and had to be simultaneously satisfied and the Tribunal observed that there must first be a liability to capital gains and

there must be an attempt at avoidance or reduction thereof. Finding that there was no liability to capital gains according to the Income Tax

Officer"s own computation, he having arrived at a capital loss, the Tribunal held that there was no proved attempt at avoidance or reduction of

liability to tax. It was held that the second condition was not satisfied and the proviso did not, therefore, apply. The Income Tax Officer was

directed to modify the assessment in the light of the finding of the Tribunal. On these, at the instance of the revenue, u/s 66(2) of the Indian Income

Tax Act, 1922, the following questions have been referred to this court:

(1) Whether, on the facts and in the circumstances of the case, and on a proper construction of the first proviso to Section 12B(2) of the Indian

Income Tax Act, 1922, the Tribunal was correct in holding that there was no liability of the assessee u/s 12B of the Indian Income Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that there was no attempt at reduction of liability to tax

was perverse in the sense that no reasonable person would come to it on the materials on record. ?

4. Section 12B of the Indian Income Tax Act, 1922, imposed tax on an assessee in respect of profits or gains arising from the sale, exchange,

relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains would be deemed to be the

income of the previous year in which the sale, exchange, relinquishment or transfer took place. The first proviso to Sub-section (2) of Section 12B

provides that where a person who acquires a capital asset from the assessee is a person with whom the assessee is directly or indirectly connected

and the Income Tax Officer has reason to believe that the sale, exchange, relinquishment or transfer was effected with the object of avoidance or

reduction of the liability of the assessee under this section, the full consideration for which the sale, exchange, relinquishment or transfer is made,

shall, with the prior approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date on

which the sale, exchange, relinquishment or transfer took place. Therefore, for the purpose of taking the fair market value, to be the value on the

basis of which capital gains are to be computed, two conditions are required by the first proviso to the sub-section to be fulfilled, namely, the sale

must be to a person with whom the assessee is directly or indirectly connected and, secondly, that the transaction must be entered into with the

object of avoidance or reduction of the liability of the assessee under the section. It is apparent that the two conditions are cumulative and the

Tribunal has so held. We are in agreement with the Tribunal on this aspect of the matter. This view is also supported by the observations of the

Supreme Court in the case of Commissioner of Income Tax, West Bengal and Another Vs. George Henderson and Co. Ltd., . The first question is

directed to the finding that there was no liability of the assessee u/s 12B of the Indian Income Tax Act, 1922. The answer is self-evident. If on the

computation made there was capital loss then there cannot be any liability for capital gains u/s 12B. Therefore, the Tribunal was right in view of the

calculations made that there was no liability on the assessee u/s 12B of the Indian Income Tax Act. If there was no liability then no question arises

of attempt being made at the reduction of liability to tax and of entering into transaction with that view in the end. The second condition of the first

proviso to the sub-section requires that the sale, exchange, relinquishment or transfer must be with the object of avoidance or reduction of ""liability

of the assessee under the section"". But if there is no liability or if the transaction is of such a nature that no liability could arise, then in our opinion

there cannot be any attempt to reduce the liability by selling at a value less than the fair market value. Such a finding by the Tribunal cannot be

described as perverse in the sense that no reasonable person can come to such a finding. We, therefore, answer the first question in the affirmative

and the second question in the negative and both in favour of the assessee. Parties will pay and bear their own costs.

5. Before we part with this matter we must confess that it seems to us that this is really an academic pursuit and an exercise in futility because the

assessee originally showed a profit on this head. The revenue computed a loss. We have not been able to appreciate how the assessee is worse off

by the finding of the Income Tax Officer and what was the real purpose of appeal to the Appellate Assistant Commissioner unless, as was

suggested, to settle a question of law which we find difficult to appreciate. There was no question of carrying forward of any capital loss to the next

year. We have also not appreciated the revenue''s endeavours to pursue this rather academic, in the facts and circumstances of this case,

controversy.

Sudhindra Mohan Guha, J.

6. I agree.