

(1993) 02 BOM CK 0119

Bombay High Court**Case No:** Income-tax Reference No. 495 of 1978

Gammon India Pvt. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 19, 1993**Acts Referred:**

- Income Tax Act, 1961 - Section 246

Citation: (1993) 202 ITR 986**Hon'ble Judges:** U.T. Shah, J; Sujata V. Manohar, J**Bench:** Division Bench**Advocate:** Dilip Dwarkadas, instructed by M/s. Gagrath and Co., G.S. Jetley, for the Appellant;

Judgement

Mrs. Sujata Manohar, J.

The assessee company carries on business as civil engineers and contractors on a substantial scale. At the material time, the value of the assessee's completed contracts amounted to Rs. 1 1/2 to 2 crores and the value of its book profits ran into several lakhs of rupees. The reference pertains to the assessment years 1957-58 to 1960-61. The following two questions have been referred to us. While question No. 1 is common to all the assessment year 1957-58 to 1960-61, question No. 2 is only for the assessment year 1958-59 :

"1. Whether an appeal to the Appellate Assistant Commissioner against the charge of penal interest was competent ?

2. Whether, on the facts and in the circumstances of the case, the sum of Rs. 1 lakh was rightly assessed as the income of the company ?"

2. In respect of question No. 1, we need not set out the facts in any detail because it is an accepted position that in view of the decision of the Supreme Court in the case of [Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax](#), the

question must be answered in the negative and in favour of the Revenue. The question is answered accordingly.

3. Regarding question No. 2, the relevant facts are as follows :

The assessee submitted a tender on August 31, 1956, to the Government of Bombay for lining the Mahi Canal. The tender of the assessee was accepted on March 22, 1957. Thereafter, the assessee and another construction company called the "Shah Construction Company Private Limited" decided to float a new company called Shah Gammon Pvt. Ltd. Accordingly, the new company was registered on May 6, 1957. Thereafter, the board of directors of the assessee passed a resolution on September 5, 1957, under which in consideration of a sum of Rs. 1,00,000 to be paid by the new company to the assessee, the assessee-company agreed to assign the said contract to the new company after obtaining the approval of the P. W. D. On December 30, 1957, by an agreement executed between the assessee company, the Shah Construction Company and the new company, the Mahi Canal contract was assigned and then transferred to the new company for which the assessee company received a sum of Rs. 1,00,000.

4. Before the transfer of the contract to the new company, the assessee company had executed one third of that contract. The total Contract was for Rs. 72,00,000 and the assessee-company had received payment amounting to Rs. 21,81,811 from the P. W. D. before the contract was transferred to the new company. These payment have been transferred to the new company and the only amount which has come in the assessee accounts in respect of this contract is a sum of Rs. 1,00,000.

5. The assessee-company claimed that the receipt of Rs. 1,00,000 was exempt from Income Tax as it was a capital receipt and was of a casual and non-recurring nature. The Income Tax authorities have, however, held that the sum of Rs. 1,00,000 received by assessee-company from the new company is taxable as a revenue receipt in the assessee-company's hands. Hence the above question has been referred to us at the instance of the assessee.

6. Mr. Dwarkadas, learned counsel for the assessee, submits in this connection that the contract must be viewed as a capital of the company and the amount of Rs. 1,00,000 which is received for transfer of this contract should be treated as a capital receipt. He also submits that it is a casual receipt and not a receipt in the course of business of the company. He relies in this connection on the decision of the Supreme Court in the case of [Commissioner of Income Tax, U.P. Lucknow Vs. The Maheshwari Devi Jute Mills Ltd. Kanpur](#), . The Supreme Court said that the transaction of transfer of loom hours and the receipts which the company obtained by sale of surplus loom hours and the hours were capital receipts and not income. He also relied upon the decision of the Andhra Pradesh High Court in the case of [Commissioner of Income Tax Vs. Barium Chemicals Ltd.](#), . The Andhra Pradesh High Court in that case has observed that in order to decide whether or not a payment is

a revenue receipt, its true nature and substances must be looked into. If the payment is received into ordinary course of the business of the assessee for loss of stock-in-trade, it is a revenue receipt. If, on the other hand, the payment received is towards compensation for extinction or sterilisation, partly or fully, of a profit-earning source, such receipts, not being in the ordinary course of the assessee's business, is a capital receipt. On the facts before it, the court said that the settlement which had been concluded by the assessee and the English company, under which the assessee-company received certain payments, was not in the ordinary course of the business carried on by the assessee. The amounts which were paid were towards damages in order to compensate the assessee for not fulfilling the terms of the contract. Having regard to all the said circumstances, the court said that what was received by the assessee was a capital receipt and was not liable to tax.

7. The above decisions, in our view, do not assist the assessee looking to the facts of this case. The assessee has assigned this contract for Rs. 1,00,000 to the new company and has also transferred to the new company the payments received under that contract by the assessee-company till that date. Had the contract been completed by the assessee, any profit which the assessee might have earned would have been its business income. This amount of Rs. 1,00,000 received by the assessee is in lieu of this benefits which the assessee would have received under the contract. Hence, in our view, it Partakes of the character of a revenue receipt rather than a capital receipt.

8. In the case of [Kettlewell Bullen and Co. Vs. Commissioner of Income Tax, Calcutta,](#) , the Supreme Court was concerned with a case where the assessee-company had relinquished the managing agency for a certain amount. The question was whether the amount received was a revenue receipt. The Supreme Court said (headnote) :

"It cannot be said as general rule that what is determine of the nature of a receipt on the cancellation of a contract of agency or office is extinction or compulsory cessation of the agency or office. Where payments is made to compensate a person for cancellation of a contract which does not effect the trading structure of his business or deprive him of what in substances is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated), the receipt is revenue; where by the cancellation of an agree the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regard as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt."

9. In the case before it, the Supreme Court held the compensation a falling in the latter category of a capital receipt. But, so far as the case before us is concerned, the assigned of the contract and the payment received for it squarely fall within the first category enumerated by the Supreme Court. The Sum of Rs. 1,00,000 is paid to

compensate the assessee for assignment or transfer of the contract. Such assignment does not affect in any manner the trading structure of the assessee's business nor does it deprive him of any source of income. The assignment appears to be in the normal course of business and has not impaired the assessee in any manner in carrying on its business. In these circumstances, the payment for assignment of the contract, in our view, clearly is in the nature of a revenue receipt.

10. In the case of [The Commissioner of Income Tax, U.P., Lucknow Vs. Gangadhar Baijnath Generalganj, Kanpur](#), the Supreme Court applied the same tests cited above. In that case the assessee-firm and another firm combined to form a partnership firm which enjoyed to the managing agency of the Swadeshi Cotton Mills Co. The assessee-firm retired from the business of the partnership firm and received from the continuing partners, in addition to their capital investments and interest thereon, a certain sum on account of compensation for surrendering their interest in the partnership firm. The partnership firm thereafter continued to be the managing agent of the mills in question. The outgoing assessee firm carried on various business activities with the aid of lump sum which it received as compensation. The question was whether this lump sum was business income of the assessee-firm or whether it was a capital receipt. The Supreme Court held that the assessee-firm had various business activities and to have joined the other partnership firm was only one such activity. The assessee-firm had surrendered its rights in the partnership to the other partner and obtained certain for surrendering its rights. This was a case of cancellation of a contract which had been entered into in the ordinary course of business. Any payments received in connection with the termination of the contract really represented the profit which the assessee would have made had the contract been performed. Hence the entire amount received by the assessee-firm was a business receipt. In the present case also the amount which is received by the assessee-company for assignment of a contract which it had entered into and which formed a part of its business activities, really represents the profits it would have made on the contract. The assignment has not affected in any manner the trading structure of the company or its business activities. The amount received for assigning this contract, therefore, must be viewed as a revenue receipt.

11. In the premises question No. 2 is answered in the affirmative and in favour of the revenue.

12. No order as to costs.