

**(1992) 03 BOM CK 0090**

**Bombay High Court**

**Case No:** Income-tax Appeal No. 596 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Mather and Platt (I.) Ltd.

RESPONDENT

---

**Date of Decision:** March 8, 1992

**Acts Referred:**

- Income Tax Act, 1961 - Section 28

**Citation:** (1993) 204 ITR 757

**Hon'ble Judges:** Sujata V. Manohar, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** Deokinandan, K.M.L. Majele, for the Appellant;

---

### **Judgement**

Mrs. Sujata Manohar J.

1. The facts which are relevant to this application made u/s 256(2) of the Income Tax Act, 1961, at the instance of the Department, are as follows :

2. Under an order of this court dated February 20, 1979, the scheme of amalgamation of the assessee-company with Messrs. Mather and Platt, U.K., was sanctioned at the instance of the transferee-company with effect from July 1, 1978. Similarly, the Calcutta High Court, by its order dated January 18, 1979, sanctioned the scheme of amalgamation at the instance of the transferor-company. Under the scheme of amalgamation, the U.K. company transferred its entire business and undertaking in India to the assessee-company with effect from July 1, 1978, for a consideration of Rs. 1,77,78,784 to be paid in the shape of equity shares of the assessee company of the value of Rs. 89,50,000 and Rs. 87,68,784 credit for an interest free loan by the U.K. company, the loan being repayable in two installments subject to the approval of the reserve Bank of India. Although the scheme of amalgamation came into effect from July 1, 1978, the actual allotment of shares by the assessee-company which were worth Rs. 89,50,000 was made on May 3, 1979. The assessee-company sought to include the shares allotted to the U.K. company in

the capital base of the company as on July 1, 1978. The Tribunal has, for the purpose of calculation of statutory dues under the Companies (Profits) Surtax Act, 1964, allowed this inclusion. The application by the Department to the Tribunal for raising the following question of law and referring it to us for adjudication has been rejected :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the value of equity shares worth Rs. 89,50,000 allotted to Messrs. Mather and Platt Ltd., U.K., in the scheme of amalgamation in the subsequent year as on December 31, 1969, must relate back to January 1, 1969, in view of specific directions of the High Court and should be included on the capital of the company as on January 1, 1978, being the first day of the previous year relevant to this assessment year for surtax purpose ?"

2. Hence the present application which is made before us u/s 256(2) of the Income Tax Act, 1961.

3. There are obvious factual errors in the question which was formulated and we would like to point these out at the outset.

4. The date of allotment is wrongly mentioned as December 31, 1969. The correct date of allotment of these shares is May 3, 1979. The relation back of this allotment is not as on January 1, 1969, but it should be as on July 1, 1978. These dates appear to have been wrongly reproduced from the order passed in another case. Moreover, the statement that the allotment took place in the subsequent year is also incorrect. The actual allotment which took place on May 3, 1979, is in the same previous year. The inclusion of the capital of the company should be as on July 1, 1978, and not January 1, 1978. The Tribunal has held that it relates back to the date of amalgamation viz., July 1, 1978.

5. The scheme of amalgamation as per the order of the Bombay High Court and the Calcutta High Court was admittedly approved with effect from July 1, 1978.

6. The amount of capital for the purpose of surtax is to be computed as on the first date of the accounting year. In the present case, this would be July 1, 1978. The scheme of amalgamation is with effect from July 1, 1978, and hence the share worth Rs. 89,50,000, which were required to be issued under the scheme of amalgamation, which came into operation on July 1, 1978, formed part of the capital as on July 1, 1978. In the case of [Commissioner of Income Tax, Pune-I Vs. Swastik Rubber Products Ltd.](#), a Division Bench of this court held that the order of the court sanctioning the scheme of amalgamation in that case clearly provides that the entire undertaking and the business and the property of the assessee-company would stand transferred to the transfer-company with effect from the appointed date in the scheme of amalgamation which, in that case, was July 1, 1971. After referring to the provisions of sections 391 and 394 of the Companies Act, 1956, the court said that the legal effect of the order sanctioning the scheme of amalgamation was that

the provisions of the scheme would come into operation from the appointed date.

7. Similarly, in the case of Mafatlal Gagalbhai and Co. Pvt. Ltd. v. CIT [1992] 193 ITR 188, a Division Bench of this court held that, from the appointed date under the scheme of amalgamation, the transferor-company amalgamated with the transferee-company and that any dividend which was declared thereafter by the transferor company and which had been paid to the transferee-company in respect of shares which the transferee company originally held in the transferor-company could not be treated as income of the transferee company because after coming into operation of the scheme of amalgamation, the transferee-company could not receive dividend on its own shares.

8. In the premises, in our view, looking to the appointed date, the value of the shares issued by the assessee-company in favour of the U.K. company must, therefore, form a part of the capital base of the assessee company from the appointed date. The answer, therefore, to the question, in our view is obvious and no useful purpose will be served, looking to the relevant facts, by directing the Tribunal to frame the question and refer it to us.

9. Rule is, therefore, discharged. No order as to costs.