Commissioner Of Income Tax vs Shivakami Co. Pvt. Ltd on 18 March, 1986

Equivalent citations: 1986 AIR 1691, 1986 SCR (1) 881, AIR 1986 SUPREME COURT 1691, 1986 (2) SCC 418, 1986 TAX. L. R. 900, (1986) 159 ITR 71, (1986) 1 SCJ 600, (1986) 81 TAXATION 9, 1986 UJ(SC) 2 96, 1986 UPTC 874, 1986 SCC(TAX) 436, (1986) 2 SUPREME 409, (1986) 2 COMLJ 233, (1986) 52 CURTAXREP 108

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

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           PETITIONER:
COMMISSIONER OF INCOME TAX

        Vs.

RESPONDENT:
SHIVAKAMI CO. PVT. LTD.

DATE OF JUDGMENT18/03/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
 1986 AIR 1691            1986 SCR  (1) 881
 1986 SCC  (2) 418        1986 SCALE  (1)451
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ACT:

Indian Income Tax Act 1922/ Income Tax Act 1961, 8.12 B(2) first proviso/ 8.52 - Capital asset - Acquisition of Understatement of consideration in transfer of property Understatement of value, a mis-statement of value - selling at under value to defeat revenue different from understating value in a document of sale.

HEADNOTE:

The respondent, a private company under the Companies Act, 1956 in C.A. 1533 of 1974, had shares in two private companies. during the relevant period, it sold those shares and according to the respondent-assessee, the sales resulted in a loss. The shares were not quoted in stock market. However, the Income tax Officer held that the break-up value on the date of files of the shares in the two companies was Rs.1,72,800 and Rs.1,54,000 and after deducting the cost price of the aforesaid shares of Rs.81,201 and Rs.1,00,000 respectively from the above said break-up value, he determined the capital gain at Rs.91,599 and Rs.54,000 respectively under the first proviso to section 12-B(2) of the 1922 Act. The Appellate Assistant Commissioner as also the Tribunal rejected the appeals of the respondent-assessee and upheld the order of the Income tax Officer.

Aggrieved by the order of the Tribunal, the respondent assessee went to the High Court in a reference. The High Court allowed the reference holding that the first proviso to subsection (2) of section 12-B of the Indian Income-tax Act, 1922 was not applicable. It observed : (i) that the sale was true; (ii) that the consideration was not understated; and (iii) that the explanation given by the assessee for effecting the sale was not acceptable. The same question of law arose in the other civil appeals.

Dismissing the appeals,

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HELD : 1.1 The proviso to section 12B(l) of the Act can be invoked only where the consideration for the transfer of capital asset has been understated by the assessee. The first proviso to section 12B(1) of the Act provides 'full value of the confederation for which the sale, exchange, relinquishment of transfer is made', to be taken as the basis for the computation of the capital gains. Therefore, unless there is evidence that more than what was stated was received, no higher price can be taken to be the basis for computation of capital gains. The onus is on the Revenue - inferences might be drawn in certain cases but to come to a conclusion that a particular higher amount was in fact received must be based on such material from which such an irresistible conclusion follows. The proviso helps or enables the department by providing a way to determine the market value. But the proviso is applicable only where the full value for the consideration has not been stated. [889 G-H]

1.2 When a conclusion of the fact finding body is based on an inference from primary facts, then the findings of facts are not amenable to challenge but the inference drawn from the primary facts are open to challenge as conclusions of law. It is also open to challenge the same on the ground that the conclusion of fact drawn by the Tribunal was not supported by legal evidence or that the impugned conclusion drawn from the fact was not rationally possible. In such a case, it is necessary to examine the correctness of the conclusion. [886 H; 887 A-B]

Commissioner of Income-tax v. Rajasthan Mines. 78

I.T.R. 45, relied upon.

In the instant case, the facts found were that there was d sale. The High Court has stated that the Tribunal had found that the consideration was not understated. The High Court also notices that the explanation given by the assessee for effecting the sale was not acceptable. The onus was on the Revenue to prove that there was understatement in the document not that the goods were sold at under value. There is no evidence that the full consideration received by the assessee in the transfer of the asset involved in these cases has been understated. The revenue has made no attempt to establish that there was any under-statement though it might be that sharee were sold at an under value. [888 B-D]
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K.P. Verghese v. Income-tax Officer, Ernakulam & Anr., 131 I.T.R. 597, followed.

2. Understatement of value is a mis-statement of value. Selling goods at an undervalue to defeat Revenue is different from understanding the value in the document of sale. [888 D]

In the instant case, there is no evidence direct or inferential that the consideration actually received by the aesessee was more than what was disclosed or declared by him [888 F]

Capital gd ns was intended to tax the gains of an assescee, not what an assessee might have gained. What is not gained cannot be commuted as gained. All laws fiscal or otherwise must be both reasonably and justly interpreted whenever possible. Capital gains tax is not a tax on what might have been received or could have taxed. [889 L]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1532 - 35 (NT) of 1974.

From the Judgment and Order dated 7th March, 1972 of the Madras High Court in Tax Cases Nos. 79, 83, 98 and 99 of 1966.

S.C. Manchanda, Ms. A. Subhashini and K.C. Dua for the Appellant.

Nemo for the Respondent.

The Judgment of the Court was delivered by NUKHARJI, J. These appeals are by certificates granted by the High Court of Madras under article 133(1) of the Constitution.

An identical question of law had been referred in respect of four separate tax cases to the High Court under section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as '1922 Act') at the instance of the assessee. The High Court disposed of these appeals by one common judgment.

The High Court had to answer the following question -

> "Whether, on the facts and in the circumstances of the case, the conclusion of the Tribunal, that for the purpose of the computation of capital gain on the sale of the shares in East India Corporation Ltd., Madura Insurance Company Ltd. and Pudukottah Company Private Ltd, the first proviso to sub- section (2) of section 12B of the Indian Income- tax Act, 1922 was applicable, is correct in law?"

The High Court answered the question in the negative and in favour of the assessee.

According to the High Court in the instant case, the shares held by the assessee company were sold to two persons who were directly or indirectly connected with them at prices considerably less than their break-up value.

As mentioned hereinbefore, the four cases were dealt by the High Court together. It may be appropriate to refer to Tax Case No. 83/66 first. The assessee in that case was Rukmani Co. Private Ltd. It was a private limited company incorporated in the former Pudukottai State and at the time the High Court dealt with the matter, was a company under the Companies Act, 1956. The paid up capital of the assessee-company consisted of 50 shares of the face value of Rs.1,000 each, fully paid up and the shareholders during the material time were Padmanabha Private Ltd. holding 25 shares and Pudukottah Corporation Private Ltd. holding the remaining 25 shares. On 14th March, 1957, the assessee sold 800 shares held by it in East India Corporation Ltd. and 1,000 shares held by it in Madura Insurance Company Ltd. to Pachnayaki Private Ltd., Coimbatore, for a sum of Rs.60,000 and Rs.75,000 respectively. The cost price of the 800 East India Corporation Ltd. shares was Rs.81,201 and that of 1,000 Madura Insurance Company Ltd. was Rs.1,00,000. On the same day the assessee had sold its 499 shares in Pudukottah Company Private Ltd. to Padmanabha Company Private Ltd. for the cost price of Rs. 4,990. The shares in east India Corporation Ltd., Madura Insurance Company Ltd. and Pudukottah Company Private Ltd. were not quoted in stock- market. It was ascertained from the order of the Tribunal that the break-up value on the date of sale of the 800 shares in East India Corporation Ltd. was Rs.1,72,800 and the 1000 shares in the Madura Insurance Company Ltd. was Rs.1,54,000. Deducting the cost price of Rs. 81,201 and Rs.1,00,000 respectively from the above said break-up value, a sum of Rs.91,599 and Rs.54,000 respectively had been determined as the capital gain under the first proviso to section 12B(2) of the 1922 Act in respect of the sale of shares in East India Corporation Ltd. and Madura Insurance Company Ltd. The Tribunal gave a finding that there was no capital gain in respect of the sale of the shares in Pudukottah Company Private Ltd.

Discussing the facts of Tax Case No.79/66 in case of Sivakami Company Private Ltd., the Tribunal held that the assessee was liable to pay capital gains tax under the first proviso to section 12B(2) of the 1922 Act and it also held that the assessee had sold 499 shares in Pudukottah Company Private Ltd. to Padmanabha Private Ltd. for Rs.4,990 in respect of which the Tribunal held that there was no capital gain.

In Tax Case No. 98/66, the assessee was Pudukottah Company Private Ltd. which was a private limited company with a paid up capital of 3,000 shares of the face value of Rs.100 each with Rs.10 per share paid up and the shareholders were certain above-mentioned companies. In respect of sales of these shares, the Tribunal held that the assessee was liable to pay tax on the capital gain under the first proviso to the said section.

More or less similar is the position in Tax Case No.99/66 where the assessee was Pudukottah Corporation Private Ltd.

In all these cases, in the original proceedings for assessment for the year 1958-59, it was held by the Appellate Assistant Commissioner, accepting the contention of the respective assessees, that the profit or loss on the sale of the aforesaid shares should not be considered as trading profit or loss on the ground that the shares were held as an investment and not as stock-in-trade of a business and the assessments were modified by excluding therefrom the profits on the sale of those shares included in the assessment. The Income-tax Officer thereafter reopened the assessment under section 34(1)(b) with a view to assess the capital gain arising on the sale of the shares. As there was some argument as to what the Tribunal actually found, it is better to refer to the order of the Tribunal. The Tribunal, inter alia, observed as follows :

> "Assuming that the sale on 14th March, 1957 was actuated by the sole motive of sequestering the shares from the Department it is not necessary that some of the shares which are very valuable should have been transferred at a loss. It falls flat and unconvincing to be told that the sole object was to sequester the shares from the clutches of the Government and at the same time proclaim that the motive was not avoidance of capital gains tax.
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> The assessee's learned counsel was not able to tell us how exactly the sale value of the East India Corporation Ltd. came to be fixed at Rs.60,000. We find that in another case the shares in this company had also been valued at the same price. The cost of acquisition was also the same."

Dealing with the finding, the High Court observed at page 316 of 88 I.T.R. where the judgment under appeal is reported, that the facts found were (1) that the sale was true; (2) that the consideration was not understated; and (3) that the explanation given by the assessees for effecting the sale was not acceptable. The High Court went on to observe that on these facts, could it be said that the sales were effected with the object of avoidance or reduction of liability of the assessee for capital gain. The High Court was of the view that the Tribunal though specifically did not find that the sales were effected with the object of avoidance or reduction of the liability for capital gain, had concluded that the department was justified in applying the first proviso of section 12B(2) of the Act.

The High Court discussed on this aspect the question as to whether the finding of the Tribunal could be interfered with in a matter like this. It is well-settled that when a conclusion of a fact finding body is based on an inference from primary facts then the findings of fact are not amenable to challenge but the inferences drawn from the primary facts are open to challenge as conclusion of law. It is also open to challenge the same on the ground that the conclusion of fact drawn by the Tribunal was not supported by legal evidence or that the impugned conclusion drawn from the fact was not rationally possible. In such a case it is necessary to examine the correctness of the conclusion. Reliance may be placed on the decision of this Court in Commissioner of Income-tax v. Rajasthan Mines, 78 I.T.R. 45. This position is well settled by many decisions of this Court.

It may be mentioned that section 52 of Income-tax Act, 1961 (hereinafter referred to as '1961 Act') corresponds to the first proviso of section 12B(2) of 1922 Act. The first proviso to section 12B(2) read as follows:

> "Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange, relinquishment or transfer, 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 value of the consideration for which the sale, exchange, relinquishment or transfer is made shall, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, 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."

Section 52 of 1961 Act came up for consideration by this Court in K.P. Varghese v. Income-tax Officer, Ernakulam, and Another, 131 I.T.R. 597. This Court held that so far as material for the present purpose sub-section (2) of section 52 could be invoked only where the consideration for the transfer of a capital asset had been understated by the assessee, or, in other words, the full value of the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, and the burden of proving such understatement or concealment was on the revenue. This Court observed that the sub-section had no application in the case of an honest and bona fide transaction where the consideration received by the assessee had been correctly declared or disclosed by him.

In the instant case, on behalf of the revenue, it was contended that it was accepted both by the Tribunal and the High Court that the transactions in question were done in order to defeat the claim of the revenue. The facts found were that there was a sale. The High Court has stated that the Tribunal had found that the consideration was not understated (emphasis supplied). Counsel for the revenue contended that this was not correct. On the other hand, an inference could be drawn that the consideration was understated. The High Court also noted that the explanation given by the assessee for effecting the sale was not acceptable.

As it appears from the decision of this Court in K.P. Varghese's case (supra), the onus was on the revenue to prove that there was understatement in the document not that the goods were sold at under-value. Understatement of value is a mis-statement of value. Selling goods at an undervalue to defeat revenue is different from understating the value in the document of sale. Counsel for the revenue contended that in the background of the facts of this case, the evil design of the assessee was clear and he said that it was difficult to know the mind of man. Therefore, an inference could be drawn in the facts of this case as noted by the Tribunal that there was understatement of value in the document. Though the legislation in question is to remedy the social evil and should be read broadly and should be so read that the object is fulfilled, yet the onus of establishing a condition of taxability must be fulfilled by the revenue. There is no evidence direct or inferential that the consideration actually received by the assessee was more than what was disclosed or declared by him. The relationship between the parties has been established. The desire to defeat the claims of the revenue has also been established but that fact that for this the assessee had stated a false fact in the document is not established. What appears from the Tribunal's order was that the real and main object was to safeguard these shares from being taken over by the Government in settlement of tax dues, and also that the buyer and seller were indirectly connected with each other.

The first proviso to section 12B(2) of 1922 Act provides 'full value of the consideration for which the sale, exchange, relinquishment or transfer is made' to be taken as the basis for the computation of the capital gains. Therefore, unless there is evidence that more than what was stated was received, no higher price can be taken to be the basis for computation of capital gains. The onus is on the revenue - the inferences might be drawn in certain cases but to come to a conclusion that a particular higher amount was in fact received must be based on such material from which such an irresistible conclusion follows. In the instant case, no such attempt was made.

As this Court has explained in K.P. Varghese's case that the second ingredient that is to say that the word 'declared' in sub-section (2) of section 52 of the Act is very eloquent and revealing. It clearly indicated that the focus of sub-section (2) was on the consideration declared or disclosed by the assessee as distinguished from the consideration actually received by him and it contemplated a case where the consideration received by the assessee in respect of the transaction was not truly declared or disclosed by him but was shown at a different figure. Capital gains was intended to tax the gains of an assessee, not what an assessee might have gained. All laws, fiscal or otherwise, must be both reasonably and justly interpreted whenever possible. Capital gains tax is not a tax on what might have been received or could have taxed. In this case, the revenue has made no attempt to establish that there was any understatement though it might be that shares were sold at an undervalue.

In view of the ratio of K.P. Varghese's case (supra) the proviso to section 12B(1) of the Act can be invoked only where the consideration for the transfer of capital asset has been understated by the assessee. There is no evidence as discussed above that the full consideration received by the assessee in the transfer of the assets involved in these cases has been understated. The proviso helps or enables the department by providing a way to determine the market value. But the proviso is applicable only where the full value for the consideration has not been stated. There is no evidence, direct or inferential, in these cases that the full consideration had not been stated in the document.

In that view of the matter, in our opinion, the appeals must fail, though on different grounds than taken by the High Court. The appeals are accordingly dismissed.

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      M.L.A.                                      Appeals dismissed.
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