

# Commissioner Of Income-Tax, West ... vs Premji Bhimji on 9 March, 1967

**Equivalent citations: [1967]66ITR441(SC)**

**Bench: J.C. Shah, S.M. Sikri**

## JUDGMENT

Shah, J.

1. The Income-tax Appellate Tribunal, Calcutta Bench, Calcutta, drew up a statement of case under section 66(2) of the Indian Income- tax Act and submitted the following question to the High Court of Judicature at Calcutta :

"Whether, under the facts and circumstances, and on the materials available, the Appellate Tribunal was justified in holding that the gain of Rs. 49,400 made by the sale of 200 shares of Radha Films Limited was a venture in the nature of trade and whether the said amount of gain was of a 'capital nature' or an 'income from business' taxable under the Indian Income-tax Act ?"

2. The learned judges of the High Court on the 15th December, 1959, after hearing counsel, were of the view that the statement of case was not sufficient to enable them to determine the question raised by the Tribunal. The court, accordingly referred the case to the Tribunal to arrive at the findings on the points indicated in their order. The High Court directed that in arriving at its findings the Tribunal will have liberty to take additional evidence that may be adduced by the parties. The court then set out six matters on which evidence may be recorded by the Tribunal.

3. The Tribunal submitted a supplementary statement of case on the 25th October, 1960. The reference was again placed for hearing before a Division Bench of the High Court. The learned judges by their judgment dated June 21, 1963, answered the question that the gain was of a capital nature and was not income from business taxable under the Indian Income-tax Act. The High Court having declined to grant a certificate under section 66A of the Indian Income-tax Act, 1922, with special leave the Commissioner of Income-tax has appealed to this court.

4. Counsel for the commissioner contends that the judgment under appeal was vitiated because the High Court authorised the Tribunal to record additional evidence on the matters set out in their order. That contention, on our judgment, must be accepted. The order of the High Court is on the face of it inconsistent with the decisions of this court. We may refer to the decision in Keshav Mills Co. Ltd. v. Commissioner of Income-tax. In that case the material part of the headnote is as follows :

"In calling for a supplementary statement of the case under section 66(4) of the Indian Income-tax Act, 1922, the High Court can require the Tribunal to include in such supplementary statement only such material and evidence as may already be on the record but which has not been included in the statement of the case made initially under section 66(1) or section 66(2). It has no jurisdiction to direct the Appellate Tribunal to collect additional material and make it a part of the supplementary statement."

5. It was certainly open to the High Court to call for a supplementary statement of case under section 66(4) on the matters enumerated in their order dated December 15, 1959. But the supplementary statement of case must on the view expressed by this court, be founded only on the evidence already on the record, and the Tribunal cannot be directed to collect any additional evidenced. It is impossible on the supplementary statement of the case submitted by the Tribunal to ascertain what part of the supplementary statement was based on additional evidence. Since the High Court had considered the facts disclosed in the supplementary statement of case in recording their opinion on the question referred, we must discharge the answer recorded by the High Court and remand the case to it with the direction that the High Court do refer the case to the Tribunal for recording its supplementary statement on the matters set out in the order of December 15, 1959, on the materials on record uninfluenced by any additional evidence collected since its original order and the High Court do, after the supplementary statement is received, proceed to hear and dispose of the reference. The supplementary statement of case dated the 25th October, 1960, will be excluded from consideration by the High Court.

6. The appeal is allowed. No order as to costs.

7. Appeal allowed.