Supreme Court of India
Tribhuvan Das G. Patel vs Commr. Of Income Tax, Bombay on 14 February, 1996
Equivalent citations: 1999 236 ITR 515 SC, (1998) 8 SCC 509
Bench: B J Reddy, K Paripoornan
ORDER

1. Heard counsel for the parties.

2. The following three questions were stated by the Tribunal for the opinion of the High Court under Section 256(1) of the Income Tax Act, 1961:

"1. Whether on the facts and in the circumstances of the case, Rs 1,72,182 or Rs 1,00,000 were liable to be included in the total income of the assessee as his share of profit from the firm of Kumar Engineering Works?

2. Whether on the facts and in the circumstances of the case, sum of Rs 50,000 received by the assessee as his share of the value of the goodwill or any part thereof was liable to tax as capital gain?

3. Whether on the facts and in the circumstances of the case, sum of Rs. 4,77,941 or any part thereof was liable to tax as capital gain by reason of Section 47(ii) of the Act?"

3. So far as Question 2 is concerned, it has already been answered in favour of the assessee. In view of the decision of this Court in CIT v. B.C. Srinivasa Setty, the said questions must be held to have been rightly answered in favour of the assessee.

4. So far as Question 3 is concerned, the assessee invoked clause (if) of Section 47 to contend that the said sum of Rs 4,47,941 does not represent a capital gain. Mr Sharma, learned counsel for the appellant-assessee, has brought to our notice the decision of this Court in CIT v. Mohanbhai Pamabhai, where it has been held, following the decision in Sunil Siddhartlibhai v. CIT, that even where a partner retires and some amount is paid to him towards his share in the assets, it should be treated as falling under clause (if) of Section 47. Therefore, following this decision, this question has to be and is answered in favour of the assessee and against the Revenue. Now survives Question 1. A few facts need to be stated in that behalf:

The assessee was a partner with two others in a partnership firm, Kumar Engineering Works. On 5-12-1960, the assessee served a notice of his intention to dissolve the firm with effect from 31-12-1960. Since the other partners refused to agree with the said demand, the assessee filed a suit being Suit No. 72 of 1961 in the Bombay High Court for a declaration that the firm was dissolved with effect from 31-12-1960 and for accounts and other ancillary reliefs. Ultimately, the dispute was settled between the parties under a deed dated 19-1-1962. Under this deed of settlement, the assessee was deemed to have retired from the firm with effect from 31-8-1961 and the remaining partners were authorised to continue to carry on the business of the firm. The assessee was paid a sum of Rs 1,00,000 as his share of profits of the firm for the period ending 31-8-1961. In addition to this Rs 1,00,000, he was also paid Rs 8,00,000 including the sum of Rs 50,000 representing the

share in the goodwill (Question 2) and Rs 4,77,941.47p. representing his share in the assets of the firm (Question 3). In his assessment proceedings, the assessee himself contended that only the sum of Rs 1,00,000 should be brought to tax and not the other amounts. In the assessment proceedings of the firm, however, the share of the assessee in the profits was arrived at Rs 1,72,155, later reduced to Rs 1,36,930. The assessee's contention was that notwithstanding the said fact, only a sum of Rs 1,00,000 should be treated as his income. This was not agreed to by the authorities. When the matter came before the High Court, it answered the said Question 1 in the following words:

"In view of the above discussion, the first question is answered thus: "on the facts and in the circumstances of the case, not Rs 1 lakh but the assessee's share of profit that may ultimately be determined in the assessment of the firm as his share of profit from the firm is liable to be included in his total income."

5. In our opinion, the answer given by the High Court is the correct one in law. We cannot agree with Mr Sharma that inasmuch as he has actually received only a sum of Rs 1,00,000, only that amount should be taken as his share of profits and not the actual amount worked out in the assessment of the firm. The amount over and above Rs 1,00,000 is also his income in law. It has accrued to him. It is immaterial that he may choose not to recover it.

6. We, therefore, reiterate that the answer given by the High Court extracted hereinabove is the correct one in the facts and circumstances of the case.

7. The appeal is accordingly dismissed so far as Question 1 is concerned but allowed so far as Question 3 is concerned. (Question 2 is not an issue before us.)

8. No costs.