

Supreme Court of India

Maharajadhiraja Sir Kameshwar ... vs Commissioner Of Income-Tax, ... on 14 April, 1959

Equivalent citations: 1959 36 ITR 246 SC

Author: Bhagwati

Bench: M Hidayatullah, N Bhagwati, S Dass

JUDGMENT Bhagwati, J.

1. This appeal with special leave under article 136 of the Constitution is directed against the refusal by the High Court of Patna to require the Income-tax Appellate Tribunal to state a case and refer to it the question of law namely :

"Whether under the facts and circumstances of the case, the amount of Rs. 1,30,785 being the excess of sale proceeds of the building, plant and machinery over the written down value of the business of the said newspapers publications could in law be termed to be income, profits and gains of the petitioner ?"

2. The facts which led to this appeal may be shortly stated. The appellant was the sole proprietor of the business which he carried on of publishing tow news-papers, namely "The Indian National" and "Aryavart" and which business had some assets. The Income-tax authorities had from time to time allowed to the appellant depreciation on the said assets for several years. In the accounting year 1356 Fasli corresponding to the assessment year 1950-1951, the appellant converted his said proprietary business into a private limited company. The entire capital of the newly-floated private limited company came out of the pocket of and was subscribed for by the appellant. The said newspapers publications and their assets were transferred from the sole proprietorship of the appellant to the newly floated private limited company of which the entire share capital was subscribed for and paid by the appellant. The appellant was allotted by way of consideration for the said transfer 25,000 shares of the said company out of which he held in his own name 24,950 share, the remaining 50 shares having been allotted at his instance to the names of his nominees by way of director's qualification shares.

3. On the said transfer certain valuation was put on these assets. The written down value of the building as on the 30th September, 1948, was Rs. 29,669, the original cost thereof including the cost of subsequent additions being Rs. 49,270. The written down value of the machines and the plants as on the 30th September, 1948, was Rs. 1,19,368 as against the original cost thereof including subsequent additions which came to Rs. 2,30,552. There was thus a difference of Rs. 1,30,785 which represented the total amount of depreciation which had been allowed by the Income-tax authorities on these assets up to that date. When the valuation was put on these assets for the purpose of the transfer, the valuation of the building with subsequent additions showed an appreciation of Rs. 54,599 and the appreciation in regard to the machinery and plant together with subsequent additions came to Rs. 1,51,744. The appreciated value of these assets therefore aggregated to Rs. 2,06,343 which was in excess of the depreciation amount already allowed namely, Rs. 1,30,785. The Income-tax Officer while assessing the appellant's income for the assessment year 1950-51 was of the opinion that the appellant had sold to the private limited company these assets at an appreciated value and realised profits thereby and since the difference between the original cost and the written

down value, namely Rs. 1,30,785, was less than the appreciated sale price of Rs. 2,06,343, the entire amount of Rs. 1,30,785 was income, profits or gains in the hands of the appellant liable to be assessed during the relevant assessment year, and assessed the same accordingly.

4. Appeals filed by the appellant before the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal failed with the result that the appellant applied to the Tribunal to state a case inter alia in connection with this particular question and an application was made by him under section 66(1) of the Indian Income- tax asking that the aforesaid question be referred to the High Court for its opinion. The Tribunal refused to refer that question and the appellant thereupon made an application to the High Court under section 66(2) of the Act requesting the High Court to direct the Tribunal to state a case and refer the said question amongst others for its decision. The High Court as stated above declined to do so, and hence this appeal.

5. Mr. Kolah appearing on behalf of the appellant has urged before us that the question whether the sum of Rs. 1,30,785 being the excess of the sale proceeds of the building, plant and machinery amounted to or could be deemed to be income, profits or gains of the appellant was a question of law and the High Court should have directed the Income-tax Appellate Tribunal to state a case and refer the said question to it for its decision. Reliance was placed by him on *Doughty v. Commissioner of Taxes*, *Commissioner of Income-tax v. Sir Homi Mehta's Executors*, and *Kikabhai Premchand v. Commissioner of Income-tax* and it was urged that the question whether there was a sale by the appellant to the newly floated private limited company which according to his submission was in no manner distinct and separate from the appellant himself and whether profits earned by the appellant in the matter of the said transaction of the transfer of the assets from himself as the proprietor to the newly floated private limited company as the transferee could be profits or gains in the real and commercial sense of the term was really a question of law and if regard be had to the observations of this court in the majority judgment in *Kikabhai Premchand v. Commissioner of Income-tax* that it was open to the court to lift the veil of corporate entity and look behind the same in order to see who were the real parties to the transaction, the present case would really come within the dictum that no man can make profit from himself. We are at present not concerned to express any opinion on the merits of this contention. Suffice it to say that this contention raises a question of law which should have been referred to the High Court by the Income-tax Appellate Tribunal for its decision, and when on the refusal of the Income-tax Appellate Tribunal to state a case and to refer the said question to the High Court the appellant approached the High Court, the High Court should, in the exercise of its jurisdiction under section 66(2) of the Income-tax Act, have asked the Income-tax Appellate Tribunal to state a case and refer the said question to it for its decision. The question as it has been framed is not aptly worded and we therefore reframe it as under :

"Whether under the facts and circumstances of the case the amount of Rs. 1,30,785 being the excess of sale proceeds of the building, plant and machinery over the written down value thereof could in law be termed to be income, profits and gains of the petitioner ?"

6. We accordingly allow the appeal and send down the question as reframed to the High Court for doing the needful in the matter in the exercise of its jurisdiction under section 66(2) of the Indian

Income-tax Act. The costs of the appellant will be costs in the reference before the High Court. The respondent will bear his own costs of this appeal in any event.

7. Appeal allowed.