

Supreme Court of India

The Commissioner Of Income ... vs Sakarlal Balabhai & Co. Ltd. ... on 26 September, 1996

Author: K Paripoornan

Bench: Paripoornan, K.S.(J)

PETITIONER:

THE COMMISSIONER OF INCOME TAX, GUJARAT, AHMEDABAD

Vs.

RESPONDENT:

SAKARLAL BALABHAI & CO. LTD. OTHERS

DATE OF JUDGMENT: 26/09/1996

BENCH:

PARIPOORNAN, K.S. (J)

BENCH:

PARIPOORNAN, K.S. (J)

JEEVAN REDDY, B.P. (J)

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEALS NOS. 3358, 4635, 4238, 4636 OF 1992 AND 1664- 65 OF 1994.

The Commissioner of Income Tax, Gujarat III, Ahmedabad V.

Shri Nand Kishore Sakarlal Balabhai etc.etc.

AND CIVIL APPEALS NOS 12531-533 OF 1996 (Arising out of S.L.P.(C) NOS.15006-08 OF 1992)
Commissioner of Income-Tax, Gujarat-I, Ahmedabad V.

Navnitlal Sakarlal (HUF) & Anr.

J U D G M E N T PARIPOORNAN, J.

1. Special leave granted in S.L.P. Nos. 15006-15008 of 1992.

2. The revenue represented by the Commissioner of Income Tax, Gujarat at Ahmedabad, is the appellant in this batch of 10 cases. The Respondents are different assessee to income- tax.

3. The revenue has filed the appeals from different orders passed by the High Court of Gujarat, rejecting the applications filed by the revenue under Section 256(2) of the Income-tax Act, 1961. The question formulated by the revenue in different cases are specified herein-below: C.A. No.3180/92 "Whether the Appellate Tribunal is right in law and on facts in holding that while computing long term capital gains and sale of shares, the bonus shares ought have been valued at average cost for the purposes of computing the cost of acquisition ?" C.A. NO.3358/92.

"WHETHER, the Appellate Tribunal is right in law and on facts in directing the I.T.O. to take the average price of bonus shares for computation of capital gains in respect of sale of 530 equity shares of Sarangpur Cotton Mfg. Co. Ltd., without reducing the cost price on receipt of bonus shares?"

C.A. No. 4635/92 "WHETHER, the Appellate Tribunal is right in law and on facts in directing the I.T.O. to take the average price of bonus shares for computation of capital gains in respect of sale of 716 equity shares of Sarangpur Cotton Mfg. Co. Ltd. without reducing the cost of original shares on averaging the cost price on receipt of bonus shares ?"

C.A. No.4238/92 "WHETHER the Appellate Tribunal is right in law and on facts in directing the I.T.O. to take the average price of bonus shares for computation of capital gains in respect of sale of 1633 equity shares of Sarangpur Cotton Mfg. Co. Ltd. without reducing the cost price on receipt of bonus shares?"

C . A. No. 4636/92 "Whether the Appellate Tribunal is right in law and on the facts in directing the I.T.O. to take the average price of bonus shares for computation of capital gains in respect of sale of 660 equity shares of Sarangpur Cotton Mfg. Co. Ltd. without reducing the cost price on receipt of bonus shares?"

C.A. Nos. 1664-65 (NT) of 1994 "Whether the court below were right in law and on facts, in holding that the cost of original shares should be taken either at the cost price or at the substitute price as' on 1. 1.64 ?"

C.A. Nos. 12531-35 of 1996 (@ S.L.P. Nos. 15006-08 of 1992) "Whether the Appellate Tribunal is right in law and on facts in directing the Income-tax Officer to take the average price of bonus shares for computation of capital gain in respect of sale of 414 equity shares of Sarangpur Cotton Manufacturing Co. Ltd., without reducing the cost of original shares on averaging the cost price on receipt of bonus shares ?"

4. We heard counsel. In rejecting the applications under Section 256(2) of the Income-tax Act, the High Court has not even adverted to the minimal facts, and the findings of the Appellate Tribunal and has failed to give the reasons as to why the applications are rejected. Various orders appealed against are far from satisfactory. We have perused the orders passed by the Appellate Tribunal in the

appeals. We are of the view that on the basis of the findings entered by the Appellate Tribunal and the decisions adverted to by it, the question of law posed in the various cases do arise out of the order of the Appellate Tribunal. It appears from the orders of the Appellate Tribunal that in disposing of the appeals and entering appropriate findings, discussion of alternate views was called for.

5. In the facts and circumstances, we set aside the orders passed by the High Court rejecting the applications of the revenue filed under Section 256(2) of the Income-tax Act. We direct the Income Tax Appellate Tribunal, Ahmedabad to refer the questions of law in the different cases, as specified herein above, for the decision of the High Court and forward the same along with the statement of the case and the relevant documents. We expect that the Appellate Tribunal will take appropriate steps expeditiously, to enable the High Court to dispose of the matter finally. The appeals are allowed. There shall be no order as to costs.