

Supreme Court of India

Vijay Kumar Budhia And Smt. ... vs Commissioner Of Income Tax, Patna on 14 September, 1993

Equivalent citations: AIR 1994 SC 1197, 1993 204 ITR 355 SC, (1994) 1 SCC 289

Bench: B J Reddy, S Bharucha

JUDGMENT

1. Civil Appeal No. 2042 of 1984:

This appeal is preferred against the judgment of the Patna High, Court answering the question referred to it in favour of the Revenue and against the assessee. The reference was made at the instance of the Revenue. The question as stated by the Tribunal read as follows:

Whether on the facts and in the circumstances of the case, the amount of Rs. 34,040/- was assessable in the hands of the assessee under the head Capital Gains.

2. With a view to bring out the issue in controversy more clearly, the High Court reframed the question in the following terms:

Whether on the facts and in the circumstances of this case the sum of Rs. 34,040/- could be held to have been rightly included in the capital gain of the assessee under Section 46 read with Sections 48 and 49 of the Income-tax Act, 1961?

3. The assessee was a shareholder in a Private Limited Company. The Company went into liquidation. In those proceedings, the assessee received certain assets towards the shares held by him. In the assessment proceedings relating to the relevant years, question arose whether the assets so received by the assessee can be treated as his income by way of capital gains. The I.T.O. placed his own value on the said assets and levied the tax. Assessee's contention was that inasmuch as there was no transfer of property and since the income did not arise from any such transfer, no capital gains could be said to have arisen. This plea was negatived by the I.T.O. When the matter ultimately reached the High Court, it Ruled against the assessee relying upon the specific provisions contained in Sub-section (2) of Section 46. Section 46 of the Income-tax Act reads as follows:

Capital gains on distribution of assets by companies in liquidation.

46. (1) Notwithstanding anything contained in Section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of Section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of Sub-clause (c) of Clause (22) of Section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of Section 48.

4. It is the Sub-section (2) which is particularly relevant in the present case. Even though the income received by the assessee in the liquidation proceedings was not on account of any transfer of property, yet the Parliament has chosen to treat such receipt as capital gains, subject of course to certain specified deduction. May be, it is a case of a fiction created by Parliament-may be not. The validity of the provision is not questioned nor is it in issue herein. The Sub-section says that where a shareholder receives certain amounts or other assets from the company on its liquidation he shall be charged with income-tax under the head "capital gains" in respect of the money so received or on the market value of the assets received as on the date of the distribution. The only deduction expressly provided by the Sub-section is "the amount assessed as dividend within the meaning of Sub-clause (c) of Clause (22) of Section 2." The Sub-section declares further that the sum so arrived at shall be deemed to be the full value of the consideration of the purposes of Section 48. (Section 48, it may be noted, specified the permissible deductions from the full value of the consideration which includes the cost of acquisition of the asset).

5. Clause (22) in Section 2 defines the expression "dividend". Sub-clause (c) thereof specifically includes within the meaning of dividend "any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not." It is this amount which is directed to be deducted by Sub-section (2) of Section 46.

6. We are, therefore, of the opinion that in the light of the specific provision contained in Sub-section (2) of Section 46, the value of the assets received by the assessee was rightly and properly brought to capital gains tax. There are no grounds to interfere in the matter.

7. This is also the view taken by this Court in CIT, Gujarat v. R.M. Amin .

8. Accordingly, this appeal fails and is dismissed.

Civil Appeal No. 1411 of 1975:

9. None appears for the appellant. However, we find that the question arising herein is the same as in Civil Appeal No. 2042 of 1984. This appeal too accordingly fails and is dismissed. No costs.