Supreme Court of India
Commissioner Of Income Tax vs Electric Control Gear Mfg. Co. on 8 March, 1997
Equivalent citations: (1997) 141 CTR SC 302
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JUDGMENT S. C. AGRAWAL, J. :

This appeal by certificate is directed against the judgment of the Gujarat High Court dt. 29th August, 1980. The matter relates to the asst. yr. 1967-68. The assessee is a partnership concern consisting of 13 partners. On 31st March, 1966 it entered into an agreement whereby it transferred the entire assets of business together with liabilities as a going concern to a limited company, styled M/s Electric Control Gear Pvt. Ltd. for a consideration of Rs. 8 lakhs. The erstwhile partners of the assessee firm were allotted the shares of the same value in their profit sharing proportion. The ITO held that depreciation allowed to the assessee-firm amounting to Rs. 3,32,863 in respect of the assets transferred by the firm to the said company was chargeable to tax under the provisions of s. 41(2) of the IT Act, 1961 (hereinafter referred to as the Act). He also brought to tax capital gains of Rs. 8 lakhs, being purchase consideration received by the assessee and after excluding the sum of Rs. 5,000 as basic exemption, included the sum of Rs. 7,95,000 in the computation of the total income of the assessee under the head Capital gains. The AAC held that the impugned profits were taxable under the provisions of s. 41(2) of the Act. As regards capital gains, the AAC, however, held that the capital gains could not be taxed in the hands of the registered firm under the provisions of s. 114 of the Act. Appeals were filed by the assessee as well as the Revenue against the said judgment of the AAC. The assessee challenged the liability to tax under s. 41(2) of the Act as well as the liability to capital gains while the Revenue challenged the decision of the AAC about recomputation of profits under s. 41(2) as well as non-levy of capital gains in the hands of the registered firm under the provisions of s. 114 of the Act. The Tribunal remitted the matter to the ITO for recomputation of the aggregate amount chargeable as profits under s. 41(2) and as capital gains. The Tribunal held that the correct status of the assessee should be registered firm and not AOP. The Tribunal referred the following questions for the opinion of the High Court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the principle of mutuality was not applicable ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of s. 41(2) were applicable ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee has earned capital gains, which was liable to tax under the provisions of s. 45 of the IT Act, 1961 ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the status of the assessee was a registered firm and not that of an AOP ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal rightly rejected the claim of the assessee that surplus realised by it on sale to the limited company was not chargeable to tax,

being realisation sale ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that s. 34(2) will apply and, therefore, the assessee is not entitled to depreciation ?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the registered firm can be liable to capital gains under s. 114 of the IT Act, 1961 ?

8. Whether, the Tribunal was right in holding that the assessee was not entitled to any relief on the basis of the two circulars relied on by it ?

Questions Nos. 1, 3 and 5 were answered by the High Court in the affirmative, i.e., in favour of the Revenue and against the assessee, questions Nos. 2, 4 and 8 were answered in the negative, i.e., against the Revenue and in favour of the assessee, question No. 6 was not pressed by the learned counsel for the assessee and question No. 7 was not answered since it did not survive in view of answer to question No. 4. The present appeal relates to questions Nos. 2, 4 and 5 which have been answered against the Revenue.

2. The High Court has placed reliance on its judgment in Artex Manufacturing Co. vs. CIT (1981) 131 ITR 559 (Guj) The said judgment of the High Court has been considered by us in our judgment pronounced today in CA No. 2276 of 1981, the CIT vs. Artex Manufacturing Co. [since reported at (1997) 141 CTR (SC) 290] In that case, we have held that s. 41(2) was applicable since price attributable to the plant, machinery and dead stock which were transferred had been disclosed by the assessee during the course of assessment proceedings before the ITO and that the said price was as per the value assessed by the valuers at the time of execution of the agreement. In the present case there is nothing to indicate the price attributable to the assets like the machinery, plant or building out of the consideration amount of Rs. 8 lakhs. Merely because a sum of Rs. 3,32,863 had been allowed as depreciation to the assessee-firm, it could not be said that was the excess amount between the price and the written down value. Question No. 2 was, therefore, rightly answered against the Revenue by the High Court. On question No. 4 the High Court has taken the same view as was taken by it, while answering question No. 4 in Artex Manufacturing Cos case (supra). The said view has been affirmed by us in our judgment in that case. Question No. 8 is similar to question No. 5 in Artex Manufacturing Co.s case (supra). The view of the High Court with regard to that question has been reversed by us in our judgment in the case and for the same reasons question No. 8 must be answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

3. In the result the appeal is partly allowed to the extent that the answer given by the High Court to question No. 8 is set aside and the said question is answered in the affirmative, i.e., in favour of the Revenue and against the assessee. The answer given by the High Court to questions Nos. 2 and 4 are affirmed. No order as to costs.