

Pandit Lakshmikanta Jha

Vs

Commissioner of Income-Tax, Bihar and Orissa

Civil Appeal No. 620 of 1966

(J.C. Shah, A.N. Grover JJ)

19.02.1969

JUDGMENT

SHAH J., -

The Income-tax Appellate Tribunal referred the following question (as directed by this court to the High Court of Patna under section 66(2) of the Indian Income-tax Act, for opinion :

"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 newspaper publications could, in law, be termed to be income, profit and gain of the petitioner?"

For some time there was difference of opinion in the High Courts on the question whether it is open to the Income-tax authorities in proceedings for assessment of tax to discard the legal character of a transaction and to determine "the substance of transaction". But it has now been settled by several decisions of this court that in taxing a receipt to income-tax the authorities are only concerned with the legal effect or character of the transaction and not the substance of the transaction.

See the judgment of this court in Commissioner of Income-tax v. B. M. Kharwar (Since reported (C. A. No. 1678 of 1966, decided on August 13, 1968).

In the present case the transaction which gave rise to the receipt sought to be brought to tax was of the nature of sale; and it was not even contended that it was not intended to be a sale. It was argued, however, that the vendor and the purchaser being the same the profits arising therefrom were not taxable. That contention cannot be accepted. The High Court was, in our judgment, right in deciding against the assessee.

The appeal fails and is dismissed. No. order as to costs.

Appeal dismissed.

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