Sunil Siddharthbhai

Vs

Commissioner of Income Tax, Ahmedabad, Gujarat

And

Kartikeys V. Sarabhai

Vs

Commissioner of Income Tax

Civil Appeals Nos. 1841

(CJI P. N. Bhagwati, R. S. Pathak, A. N. Sen JJ)

27.09.1985

JUDGMENT

PATHAK, J. -

1. This and the connected appeal, filed by certificate granted by the High Court, raise the interesting question whether the capital contribution by a partner to the assets of a partnership firm at an appreciated value can be said to give rise to a capital gain in his hands liable to income tax.

2. In Civil Appeal 1841 of 1981, the facts are as follows. The appellant, who is the assessee, was a partner in Messrs Suvas Trading Company, a partnership firm constituted under a deed of partnership dated September 27, 1973. As his contribution to the capital of the partnership firm the assessee made over certain shares of limited companies which were held by him as his capital assets. The book value of those shares in his account books was shown as Rs. 1,60,279, but on the date when he contributed those shares to the partnership firm he revalued the shares at the market value of Rs. 1,49,819, and debited the resulting difference of Rs. 10,460 to his capital account.

3. The Income Tax Officer, when drawing up the assessment order for the assessment year 1974-75 in respect of the assessee, did not include the difference in the assessable income. The Commissioner of Income Tax, however, being of opinion that the difference between the market value of the shares and the cost of acquisition of the shares to the assessee should have been brought to tax as capital gains in view of Section 45 of the Income Tax Act, 1961, exercised his revisional jurisdiction, and reopening the assessment remanded the case to the Income Tax Officer directing him to revise the assessment after computing the capital gains arising out of the transfer. The assessee appealed to the Income Tax Appellate Tribunal, and the Appellate Tribunal held that while the transaction did amount to a transfer within the meaning of sub-section (47) of Section 2 of the Income Tax Act it did not result in capital gains liable to tax. The Appellate Tribunal allowed the appeal and set aside the order of the Income Tax Officer. Subsequently the Appellate Tribunal referred the case to the High Court of Gujarat for its opinion on the following questions of law :

(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that no capital gains resulted from the transfer of the shares held by the assessee to the partnership firm as his capital contribution, the cost of acquisition of the shares to the assessee being Rs. 1,49,819 and the market value of the shares being Rs. 1,60,279 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was a transfer within the meaning of sub-section (47) of Section 2 of the Income Tax Act, 1961 of the shares contributed by the assessee as capital to the partnership firm in which he was a partner ?

4. In Civil Appeal 1777 of 1981, the appellant was a partner in a registered partnership firm, Messrs Rajka, of which the other partner was his wife. The partnership was constituted under an agreement dated February 25, 1973. The partnership deed recited that the partnership business had commenced on January 1, 1973, that it was a partnership at will and further provided that the assessee would initially contribute Rs. 9,000 in cash to the share capital of the firm and his wife would contribute Rs. 1,000 in cash. It was provided that when any addition to the capital was required for the purposes of the partnership, the partners would contribute such additional capital from time to time. It was further provided that if any asset was brought in by a partner as capital contribution the account of such partner would be credited with the fair market value on the date the asset was brought in. The assessee had in his possession 580 ordinary shares of the Ahmedabad Manufacturing and Calico Printing Company Limited which had been purchased at Rs. 1,55,440. He had also 82 ordinary shares of Karamchand Premchand Private Limited purchased at Rs. 25,666. The total cost was Rs. 1,81,106.

5. On March 22, 1973 the market value of a share of the Ahmedabad Manufacturing and Calico Printing Company Limited was Rs. 442 and that of a share of Karamchand Premchand Private Limited was Rs. 2,668. On that day, the assessee introduced the two shareholdings in the partnership firm as his capital contribution, and the firm credited his account with the market value of the shares, namely Rs. 4,75,136.

6. In the assessment proceedings for the assessment year 1973-74, the Income Tax Officer took the view that the contribution by the assessee of the shares to the asset of the partnership firm constituted a transfer within the meaning of sub-section (47) of Section 2 of the Income Tax Act, 1961 and that the assessee was liable to income tax on a capital gain of Rs. 2,94,030 being the difference between the market price at which the shares were entered in the books of the partnership firm and the cost of the shares to the assessee. The assessee appealed to the Appellate Assistant Commissioner of Income Tax, but the appeal was dismissed. In second appeal, however, the Income Tax Appellate Tribunal took the view that there was no transfer of a capital asset within the meaning of Section 45 read with sub-section (47) of Section 2 of the Income Tax Act and consequently he deleted the item from the assessment. In the circumstances, the Appellate Tribunal did not go into the question whether the transfer was without consideration. The Commissioner of Income Tax obtained a reference to the High Court of Gujarat on the following questions of law :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the contribution in the form of shares of the value of Rs. 4,75,136 by the assessee in the partnership firm of Messrs Rajka did not amount to a transfer within the meaning of sub-section (47) of Section 2 of the Act resulting in capital gains chargeable to tax ?

> (2) If the reply to question No. 1 is in favour of the Revenue, whether the Tribunal erred in not considering whether the transfer is with or without consideration ?

By a common judgment dated April 30, 1981/May 1 and 4, 1981 the High Court answered the questions in favour of the Revenue and against the assessee.

7. Section 45 of the Income Tax Act, 1961 provides :

> 45(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in Sections 53, 54, 54-B and 54-D, be chargeable to income tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

8. Section 48 of the Act provides :

> 48. The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :
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> (i) expenditure incurred wholly and exclusively in connection with such transfer;
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> (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto.

9. Learned counsel for the assessee contends that in order to attract tax under the head "Capital gains", Section 45 must be read with Section 48 and therefore three cumulative conditions must be fulfilled :

> (1) There must be a 'transfer' of a capital asset, either under the general law or within the definition in sub-section (47) of Section 2 of the Income Tax Act.
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> (2) Consideration must be received or must accrue as a result of the transfer, and the consideration must be capable of being determined in monetary terms in order that the computation of capital gains may be made as required by Section 48.
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> (3) Profits or gains must arise from the transfer and must be embedded in the consideration.

10. It is urged that if any of the three conditions remains unfulfilled no charge can be levied under the head "Capital gains".

11. In support of the submission that there is no 'transfer' in the general sense of that term when a partner brings his personal assets into the firm as his contribution towards its capital, learned counsel points out that a partnership firm is not a separate legal entity and that the assets owned by the partnership are collectively owned by the partners. We have no hesitation in accepting that proposition for in Malabar Fisheries Co. v. CIT ((1979) 120 ITR 49 : (1979) 4 SCC 766 : 1980 SCC (Tax) 49) this Court observed : (SCC p. 775, para 18)

... it seems to us clear that a partnership firm under the Indian Partnership Act, 1932 is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate

rights of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest.

12. Our attention has been invited to CIT v. Hind Construction Ltd. ((1972) 83 ITR 211 : (1972) 4 SCC 460 : 1974 SCC (Tax) 149) In that case the assessee entered into a partnership and as its share of the capital it transferred its stock of machinery to the partnership firm. This Court held that when the assessee made over its machinery to the partnership firm there was no sale and the assessee did not derive any income. In CIT v. Janab N. Hyath Batcha Sahib ((1969) 72 ITR 528 (Mad) the Madras High Court held that when a partner introduces his property into a partnership firm as his contribution to its capital the transaction does not involve a sale of the property. The High Court referred to Section 14 of the Indian Partnership Act and observed :

> When a partnership is formed for the first time and one of the members of the partnership brings into the firm assets, they become the property of the firm, not by any transfer, but by the very intention of the parties evinced in the agreement between them to treat such property belonging to one or more of the members of the partnership as that of the firm.

The view that when a partner hands over a business asset to the partnership firm as his contribution to its capital he cannot be said to have effected a sale was also taken by the Allahabad High Court in M. C. Kackkar v. CIT ((1973) 92 ITR 87 (ALL)), the Kerala High Court in CIT v. C. M. Kunhammed ((1974) 94 ITR 179 (Ker)) and by the Madras High Court in CIT v. Abdul Khader Motor and Lorry Service ((1978) 112 ITR 360 (Mad)). We find no difficulty in accepting that proposition. But while the transaction may not amount to a sale, can it be described as a transfer of some other kind ? Illustrations of other kinds of transfer are provided by sub-section (47) of Section 2 of the Income Tax Act which defines the expression 'transfer' in relation to a capital asset as including "the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law". The definition is inclusive merely, and does not exhaust other kinds of transfer. Its inclusive character was overlooked by the Madras High Court in Abdul Khader ((1978) 112 ITR 360 (Mad)) and in CIT v. H. Rajan and H. Kannan ((1984) 149 ITR 545 (Mad)). In both cases the High Court confined itself to considering whether the transaction before it was covered by any of the express terms used in the definition, that is to say, sale, exchange, relinquishment or extinguishment, and taking the view that it did not fall under any of them it held that there was no transfer.

13. In its general sense, the expression "transfer of property" connotes the passing of rights in the property from one person to another. In one case there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In a third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. Therefore when a partner brings in his personal asset into the capital of the partnership firm as his contribution to its capital he reduces his exclusive rights in the asset to shared rights in it with the other partners of the firm. While he does not lose his rights in the asset altogether what he enjoys now is an abridged right which cannot be identified with the fullness of the right which he enjoyed in the asset before it entered the partnership capital. In Addanki Narayanappa v. Bhaskara Krishtappa ((1966) 3 SCR 400 : AIR 1966 SC 1300) this Court explained :

> ... whether may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause (b) of Section 48.

The position was elaborated later in the same judgment as follows :

> The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges.

It is apparent, therefore, that when a partner brings in his personal asset into a partnership firm as his contribution to its capital, an asset which originally was subject to the entire ownership of the partner becomes now subject to the rights of other partners in it. It is not an interest which can be evaluated immediately, it is an interest which is subject to the operation of future transactions of the partnership, and it may diminish in value depending on accumulating liabilities and losses with a fall in the prosperity of the partnership firm. The evaluation of a partner's interest takes place only when there is a dissolution of the firm or upon his retirement from it. It has some times been said, and we think erroneously, that the right of a partner to a share in the assets of the partnership firm arises upon dissolution of the firm or upon the partner retiring from the firm. We think it necessary to state that what is envisaged here in merely the right to realise the interest and receive its value. What is realised is the interest which the partner enjoys in the assets during the subsistence of the partnership firm by virtue of his status as a partner and in accordance with the terms of the partnership agreement. It is because that interest exists already before dissolution, as was held by this Court in Malabar Fisheries Co. ((1979) 120 ITR 49 : (1979) 4 SCC 766 : 1980 SCC (Tax) 49), that the distribution of the assets on dissolution does not amount to a transfer to the erstwhile partners. What the partner gets upon dissolution or upon retirement is the realisation of a pre-existing right or interest. It is nothing strange in the law that a right or interest should exist in

praesenti but its realisation or exercise should be postponed. Therefore, what was the exclusive interest of a partner in his personal asset is, upon its introduction into the partnership firm as his share to the partnership capital, transformed into a shared interest with the other partners in that asset. Qua that asset, there is a shared interest. During the subsistence of the partnership the value of the interest of each partner qua that asset cannot be isolated or carved out from the value of the partner's interest in the totality of the partnership assets. And in regard to the latter, the value will be represented by his share in the net assets on the dissolution of the firm or upon the partner's retirement.

14. Learned counsel for the assessee has attempted to draw an analogy between the position arising when a personal asset is brought by a partner into a partnership as his contribution to the partnership capital and that which arises when on dissolution of the firm or on retirement a share in the partnership assets passes to the erstwhile partner. It has been held by this Court in CIT v. Dewas Cine Corp. ((1968) 68 ITR 240 : (1968) 2 SCR 173 : AIR 1968 SC 676), CIT v. Bankey Lal Vaidya ((1971) 79 ITR 594 : (1971) 1 SCC 355 : (1971) 3 SCR 406) and recently in Malabar Fisheries Co. ((1979) 120 ITR 49 : (1979) 4 SCC 766 : 1980 SCC (Tax) 49) as well as by the Punjab and Haryana High Court in Kay Engineering Co. v. CIT ((1971) 82 ITR 950 (P&H), the Kerala High Court in CIT v. Nataraj Motor Service ((1972) 86 ITR 109 (Ker) and the Gujarat High Court in CIT v. Mohanbhai Pamabhai ((1973) 91 ITR 393 (Guj) that when a partner retires or the partnership is dissolved what the partner receives is his share in the partnership. What is contemplated here is a share of the partner qua the net assets of the partnership firm. On evaluation, that share in a particular case may be realised by the receipt of only one of all the assets. What happens here is that a shared interest in all the assets of the firm is replaced by an exclusive interest in an asset of equal value. That is why it has been held that there is no transfer. It is the realisation of a pre-existing right. The position is different, it seems to us, when a partner brings his personal asset into the partnership firm as his contribution to its capital. An individual asset is the sole subject of consideration. An exclusive interest in it before it enters the partnership is reduced on such entry into a shared interest.

15. Our attention has also been invited to clause (b) of subsection (1) of Section 17 of the Registration Act which requires the registration of non-testamentary instruments which purport or operate "to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property", and to the view taken by the courts in this country that when a person brings in even his immovable property as his contribution to the capital of the firm no written document or registration is required under that clause. That view was expressed in Firm Ram Sahay Mall Rameshwar Dayal v. Bishwanath Prasad (AIR 1963 Pat. 221). The learned Judges relied on the English law that the personal assets introduced by a partner into the firm as his contribution to its capital becomes the property of the firm by reason of the intention and agreement of the parties. The view does not spring from the consideration that there is no transfer. The view is that no document of transfer is required and that, therefore, registration is unnecessary. The Patna High Court reiterated that view in Sudhansu Kanta v. Manindra Nath (AIR 1965 Pat 144 : 1965 BLJR 242).

16. Accordingly we hold that when the assessee brought the shares of the limited companies into the partnership firm as his contribution to its capital there was a transfer of a capital asset within the terms of Section 45 of the Income Tax Act. In this view of the matter we agree with the conclusion reached by the Kerala High Court in A. Abdul Rahim, Travancore Confectionery Works v. CIT ((1977) 110 ITR 595 (Ker), the Karnataka High Court in Addl. CIT v. M. A. J. Vasanaik ((1979) 116 ITR 110 (Kant) and by the Gujarat High Court in the judgment under appeal.

17. The second question is whether the assessee can be said to have received any consideration as that expression is understood in the scheme of capital gains under the Income Tax Act. In CIT v. B. C. Srinivasa Setty ((1981) 128 ITR 294 : (1981) 2 SCC 460 : 1981 SCC (Tax) 119) this Court observed that the charging section and the computation provisions under each head of income constitute an integrated code, and when there is a case to which the computation provisions cannot apply at all it is evident that such a case was not intended to fall within the charging section. On the basis of that proposition learned counsel for the assessee has urged that Section 45 is not attracted in the present case because to compute the profits or gains under Section 48 the value of the consideration received by the assessee or accruing to him as a result of the transfer of the capital asset must be capable of ascertainment in monetary terms. The consideration for the transfer of the personal assets is the right which arises or accrues to the partner during the subsistence of the partnership to get his share of the profits from time to time and, after the dissolution of the partnership or with his retirement from the partnership, to get the value of a share in the net partnership assets as on the date of the dissolution or retirement after a deduction of liabilities and prior charges. The credit entry made in the partner's capital account in the books of the partnership firm does not represent the true value of the consideration. It is a notional value only, intended to be taken into account at the time of determining the value of the partner's share in the net partnership assets on the date of dissolution or on his retirement, a share which will depend upon a deduction of the liabilities and prior charges existing on the date of dissolution or retirement. It is not possible to predicate beforehand what will be the position in terms of monetary value of a partner's share on that date. At the time when the partner transfers his personal asset to the partnership firm, there can be no reckoning of the liabilities and losses which the firm may suffer in the years to come. All that lies within the womb of the future. It is impossible to conceive of evaluating the consideration acquired by the partner when he brings his personal asset into the partnership firm when neither the date of dissolution or retirement can be envisaged nor can there be any ascertainment of liabilities and prior charges which may not have even arisen yet. In the circumstances, we are unable to hold that the consideration which a partner acquires on making over his personal asset to the partnership firm as his contribution to its capital can fall within the terms of Section 48. And as that provision is fundamental to the computation machinery incorporated in the scheme relating to the determination of the charge provided in Section 45, such a case must be regarded as falling outside the scope of capital gains taxation altogether.

18. The third contention of learned counsel for the assessee is that no profit or gain can be said to arise to a partner when he brings his personal asset into a partnership firm as his contribution to its capital. It is urged that the capital gains chargeable under Section 45 are real capital gains computed on the ordinary principles of commercial accounting, and that the capital gains must be embedded in the capital asset. In Dhun Dadabhoy Kapadia v. CIT ((1967) 63 ITR 651 : AIR 1967 SC 614 : (1967) 2 SCR 1) the appellant held by way of investment some ordinary shares in a limited company. An offer was made by the company to her by which she was entitled to apply for an equal number of new ordinary shares at a premium with an option of either taking the shares or renouncing them in favour of others. The appellant renounced her rights to all the shares and realised Rs. 45,262.50. When this amount was sought to be wholly taxed as a capital gain, the appellant claimed that on the issue of the new shares the value of her old shares depreciated and that as a result of the depreciation she suffered a capital loss in the old shares which she was entitled to set off against the capital gain of Rs. 45,262.50. In the alternative she claimed that the right to receive the new shares was a right which was embedded in her old shares, and consequently when she realised the sum of Rs. 45,262.50 by selling her right, the capital gain should be computed after deducting from that amount the value of the embedded right which became liquidated. This Court

upheld the claim of the appellant that she was entitled to deduct from the sum of Rs. 45,262.50 the loss suffered by way of depreciation in the old shares. The Court proceeded on the basis that in working out capital gain or loss, the principles which had to be applied are those which are a part of commercial practice or which an ordinary man of business would resort to when making computation for his business purposes. It will be noticed that this principle was applied by the Court in a case where a capital gain was sought to be taxed under the Income Tax Act. That profits or gains under the Income Tax Act must be understood in the sense of real profits or gains, that is to say, on the basis of ordinary commercial principles on which actual profits are computed, a sense in which no commercial man would misunderstand, has been regarded as a principle of general application, and there is a catena of cases of this Court which affirms that principle. Reference may be made to Calcutta Co. Ltd. v. CIT ((1959) 37 ITR 1 : AIR 1959 SC 1165 : (1960) 1 SCR 185), CIT v. Bai Shirinbai K. Kooka ((1962) 46 ITR 86 : AIR 1963 SC 477 : 1962 Supp 3 SCR 391), Poona Electric Supply Co. Ltd. v. CIT ((1965) 57 ITR 521 : AIR 1966 SC 30 : (1965) 3 SCR 818), CIT v. Birla Gwalior (P) Ltd. ((1973) 89 ITR 266 : (1974) 3 SCC 196 : 1973 SCC (Tax) 519 : AIR 1973 SC 2486) and Bafna Textiles v. ITO ((1975) 98 ITR 1 (Kant).

19. What is the profit or gain which can be said to accrue or arise to the assessee when he makes over his personal asset to the partnership firm as his contribution to its capital ? The consideration, as we have observed, is the right of a partner during the subsistence of the partnership to get his share of profits from time to time and after the dissolution of the partnership or with his retirement from the partnership to receive the value of the share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. When his personal asset merges into the capital of the partnership firm a corresponding credit entry is made in the partner's capital account in the books of the partnership firm, but that entry is made merely for the purpose of adjusting the rights of the partners inter se when the partnership is dissolved or the partner retires. It evidences no debt due by the firm to the partner. Indeed, the capital represented by the notional entry to the credit of the partner's account may be completely wiped out by losses which may be subsequently incurred by the firm, even in the very accounting year in which the capital account is credited. Having regard to the nature and quality of the consideration which the partner may be said to acquire on introducing his personal asset into the partnership firm as his contribution to its capital, it cannot be said that any income or gain arises or accrues to the assessee in the true commercial sense which a business man would understand as real income or gain.

20. An objection has been taken by learned counsel for the respondent to this submission being raised before us because, it is said, the question has neither been referred to this Court nor was it ever argued at any earlier stage. We are not impressed by the objection because we think that it constitute one aspect of the questions which have been referred in these cases. The point rests on considerations purely of law and is fundamental is the question whether capital gain arises to an assessee upon the transfer of his shares to the partnership firm as his capital contribution. The objection is, therefore, overruled.

21. Inasmuch as we are opinion that the consideration received by the assessee on the transfer of his shares to the partnership firm does not fall within the contemplation of Section 48 of the Income Tax Act, and further that no profit or gain can be said to arise for the purposes of the Income Tax Act, we hold that these cases fall outside the scope of Section 45 of the Act altogether.

22. We have decided these appeals on the assumption that the partnership firm in question is a genuine firm and not the result of a sham or unreal transaction, and that the transfer by the partner of his personal asset to the partnership firm represents a genuine intention to contribute to the share

capital of the firm for the purpose of carrying on the partnership business. If the transfer of the personal asset by the assessee to a partnership in which he is or becomes a partner is merely a device or ruse for converting the asset into money which would substantially remain available for his benefit without liability to income tax on a capital gain, it will be open to the income tax authorities to go behind the transaction and examine whether the transaction of creating the partnership is a genuine or a sham transaction and, even where the partnership is genuine, the transaction of transferring the personal asset to the partnership firm represents a real attempt to contribute to the share capital of the partnership firm for the purpose of carrying on the partnership business or is nothing but a device or ruse to convert the personal asset into money substantially for the benefit of the assessee while evading tax on a capital gain. The Income Tax Officer will be entitled to consider all the relevant indicia in this regard, whether the partnership is formed between the assessee and his wife and children or substantially limited to them, whether the personal asset is sold by the partnership firm soon after it is transferred by the assessee to it, whether the partnership firm has no substantial or real business or the record shows that there was no real need of the partnership firm for such capital contribution from the assessee. All these and other pertinent considerations may be taken into regard when the Income Tax Officer enters upon a scrutiny of the transaction, for in the task of determining whether a transaction is a sham or illusory transaction or a device or ruse he is entitled to penetrate the veil covering it and ascertain the truth.

23. In the result, the questions which arise in these appeals are answered as follows :

> (1) There was a transfer of the shares when the assessee made them over to the partnership firm as his capital contribution.
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> (2) When the assessee transferred his shares to the partnership firm he received no consideration within the meaning of Section 48 of the Income Tax Act, 1961 nor did any profit or gain accrue to him for the purpose of Section 45 of the Income Tax Act, 1961.

These answers are given by us subject to the reservations made by us in the preceding paragraph.

24. The appeals are partly allowed and there is no order as to costs.

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