Commissioner of Income-Tax, Bombay

Vs

Rasiklal Maneklal (Huf).

Civil Appeal No. 1905 of 1974, 1906, of 1974 and 3414 of 1984

(CJI R. S. Pathak, R. B. Misra JJ)

29.03.1989

JUDGMENT

PATHAK C.J.I. –

1. The assessee is a Hindu undivided family deriving income from interest on securities, dividends, property and dealing in shares. In 1941, the assessee purchased a share of Shorrock Spinning and Manufacturing Co. Ltd., hereinafter referred to as "the Shorrock Co.", of the face value of Rs. 1000 for Rs. 3,307. Later, this share was split into 10 shares of Rs. 100 each, and from time to time a total of 80 shares of the face value of Rs. 100 each was issued to the assessee by way of bonus shares. In consequence, on December 31, 1958 the assessee owned 90 shares in the Shorrock Co., of the face value of Rs. 100 each.

There is another company called the New Shorrock Spinning and Manufacturing Co. Ltd., to which reference may be made as "the New Shorrock Co.". It was decided to amalgamate the Shorrock Co. wit the New Shorrock Co., and upon petitions filed under section 391 and section 394 if the Companies Act, 1956, the Gujarat High Court made an order dated September 23, 1960, directing meetings of the shareholders on both the companies. The meetings were held on October 27, 1960, and the scheme of amalgamation was approved. On November 25, 1960, the High Court sanctioned the schemer of amalgamation and declared that the scheme would be binding on members of both the companies.

Under the scheme of amalgamation, the undertaking and all the property, rights and powers as well as liabilities and duties of the Shorrock Co., were to stand transferred and vest with effect from January 1, 1960, in the New Shorrock Co. The Scheme of amalgamation provided further for an increase in the share capital of the New Shorrock Co., and it permitted the creation of 14,625 new ordinary shares of the face value of Rs. 125 each of the transferee-company. The newly credited shares were to rank pari passu with the existing shares of the transferee-company in all respect. Under the scheme, the New Shorrock Co., as transferee company, was directed to allot to members of the Shorrock Co., the transferor-company, one share in the transferee-company for every two shares of the transferor-company held by them, The order of the court directed that the Shorrock Co., should file a certified copy of the order with the Registrar of Companies within 14 days fir registration, and no such certified copy being delivered, the transferor company would stand dissolved and the Registrar of the Companies was to place all the documents relating to the transferor-company on the file relating to the transferee-company and the folios relating to the two companies were to be consolidated accordingly.

During the assessment proceedings for the assessment year 1961-62, the previous year being the

financial year ended March 31, 1961, the Income-tax Officer, although apprised of the fact of the scheme of amalgamation and of the acquisition by the assessee of 45 shares of the New Shorrock Co., omitted to consider the applicability or other wise of section 12B of the Indian Income-tax Act, 1922. On January 21, 1964, the Commissioner of Income-tax issued a notice under section 33B of the Act to the assessee stating that the receipt of 45 shares of the New Shorrock Co., "in exchange" for his original holding of 90 shares in the Shorrock Co. In December, 1960, had resulted in an assessable profit, and his aspect had been overlooked by the Income- tax Officer when making the regular assessment, and, therefore, he proposed a revision of the assessment. After hearing the assessee, the Commissioner of Income-tax passed an order dated January 29, 1964, directing the Income-tax Officer to revise the assessment and to include an amount of Rs. 49,350 representing the capital gain resulting from the transaction of the acquisition of 45 shares of New Shorrock Co., in the place of the 90 shares held in the Shorrock Co. On appeal by the assessee before the Income-tax Appellate Tribunal, the Appellate Tribunal held that the transaction represented neither an exchange not a relinquishment and, therefore, section 12B of the Act was not attracted.

At the instance of the Revenue, the Appellate Tribunal referred the following questions to the High Court for its opinion:

> "1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 49,350 could be assessed in the hands of the assessee as capital gains as having accrued to the assessee by exchange or relinquishment as provided for under section 12B of the Act ?
>
> 2. If the answer to the above question is in the affirmative, whether the said sum of Rs. 49,350 was assessable in the year 1961-62 ?"

Before the High Court. The Revenue did not contended that the transaction constituted a sale or a transfer and the parties confined themselves to the point as to whether the transaction represented an exchange or a relinquishment for the purposes of section 12B. The High Court took the view that no exchange can be said to have taken place on the allotment of the 45 shares of the New Shorrock Co, under the scheme of amalgamation. Nor, in the opinion of the High Court, did it constitute a relinquishment. In the result, the High Court answered both the question in favour of the assessee and against the revenue.

The relevant portion of section 12B of the Act provides:

> "12B. Capital gains. - (1) The tax shall be payable by an assessee under the head 'Capital gains' in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after March 31, 1956, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place."

The sole question is whether the receipt of the 45 shares of the New Shorrock Co., upon amalgamation by reason of the shareholding of the 90 shares of the Shorrock Co., can be described as an "exchange" or a "relinquishment" within the meaning of section 12B of the Act. It seems plain to us that no exchange is involved in the transaction. An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be a mutual transfer of ownership of another. In the present case, the assessee cannot be said to have transferred any property to any one. When he was allotted shares of the New Shorrock

Co., he was entitled to such allotment because of his holding 90 shares of the Shorrock Co. The holding of 90 shares in the Shorrock Co., was merely a qualifying condition entitling the assessee to the allotment of the 45 shares of the New Shorrock Co. The dissolution of the Shorrock Co., deprived the holding of the 90 shares of that company of all value.

On the question whether there was any relinquishment, the decision must again be against the Revenue. A relinquishment takes place when the owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the relinquishment. Upon amalgamation, the shares of the Shorrock Co., as has been mentioned earlier, lost all value as that company stood dissolved. There is no relinquishment.

The connected cases raise similar questions and are dealt with accordingly.

In the result, we agree with the view taken by the High Court and dismiss these appeals with costs.

Appeals dismissed.

</html