

Commissioner of Income-Tax

Vs

Godavari Corporation Ltd.

Civil Appeal No. 2875 of 1977

(J. S. Verma, Dr. A. S. Anand JJ)

10.09.1992

JUDGMENT

1. This appeal by special leave by the Department is against the High Court's order rejecting an application made under section 256(2) of the Income-tax Act, 1961, declining to direct the Income-tax Appellate Tribunal to state the case and refer to it for decision the questions of law said to arise out of the Tribunal's order, which are the following, namely :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income-tax Officer was not justified in invoking the provisions of section 52 (2) of the Income- tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income-tax Officer was not justified in disallowing the loss of Rs. 50,724 claimed by the assessee and in making an addition of Rs. 1,21,276 as short term capital gain on the basis of break up value of the shares on the date of transfer as the market value of shares ?"

In substance, the question of law is only one relating to the applicability of section 52 (2) of the Income-tax Act, 1961, on the facts and in the circumstances of the case.

The Tribunal while rejecting the Department's application under section 256 (1) stated as under :

"The Tribunal also relied on the fact that a dividend of Rs. 70 per share was declared by M/s. Birla Brothers for this year and merely because dividend of Rs. 200 per share was declared on these shares during the next year, i.e., for the year ending after the date the shares were sold to M/s. Maharashtra Commodities Trading Co. P. Ltd., it cannot be said that this fact was sufficient in itself to invoke the provisions of section 52 (2) of the Act without giving a finding that the assessee has understated the consideration and that the assessee has actually received more than what is stated in the document. So we find that the decision of the Tribunal is purely a finding of fact and mere reference to certain decisions in support of the conclusion would not make it a question of law."

The matter is now concluded by this court's decision in K. P. Varghese v. ITO [1981] 131 ITR 597, wherein it was held that section 52 (2) of the Income-tax Act, 1961, can be invoked only where the consideration for the transfer of a capital asset has been understated by the assessee, or, in other words, the full value of the consideration in respect of the transfer is shown at a lesser figure than

that actually received by the assessee, and the burden of proving understatement or concealment is on the Revenue; and the sub-section has no application in the case of a bona fide transaction where the consideration received by the assessee has been correctly declared. In view of the finding of fact recorded by the Tribunal, there was no question of invoking section 52 (2) of the Act. The High Court was, therefore, right in refusing to call for the reference from the Tribunal and rejecting the application under section 256 (2) of the Act.

Consequently, the appeal is dismissed.

No costs.

Appeal dismissed.

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