

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

R. Lingmallu Raghukumar

(S Agrawal and G Nanavati JJ.)

15.01.1997

ORDER

1. This appeal by the Revenue is directed against the judgment of the Andhra Pradesh High Court dated July 21, 1982 (see (1983] 141 ITR 674), in Referred Case No. 28 of 1977, whereby the following question of law referred to the High Court was answered against the Revenue and in favour of the assessee (page 676) :

"Whether, on the facts and in the circumstances of the case, the excess amount of Rs. 46,500 received by the assessee on retirement from the two partnership firms is assessable to capital gains ?"

2. The High Court has held that there was no transfer of any assets as contemplated by the expression "transfer" as defined in section 2(47) of the Income-tax Act. The High Court had placed reliance on the judgment of the Gujarat High Court in CIT v. Mohanbhai Pamabhai [1973] 91 ITR 393, wherein it has been held that where a partner retires from a partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts in the manner prescribed by the relevant provisions of the partnership law there is no element of transfer of interest in the partnership assets by the retired partner to the continuing partners. The said judgment of the Gujarat High Court has been affirmed by this court in Addl. CIT v. Mohanbhai Pamabhai [1987] 165 ITR 166. In view of the said judgment we find no merit in this

appeal and the same is, therefore, dismissed. No order as to costs.