

# KERALA HIGH COURT

Commissioner of Income-tax

Vs.

V.K. Ramakrishnan

Income-tax Referred Case No. 5 of 1967, Madras Bench in R.A. No. 2032 of 1962-63

(M.S. Menon, C.J., M.U. Isaac and V. Balakrishna Eradi, JJ.)

04.09.1967

## JUDGMENT

**Isaac, J.**

1. This is a reference made by the Income-tax Appellate Tribunal, Madras Bench, under Section 66(2) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act) in compliance with the directions this Court in O. P. No. 296 of 1964. The year of assessment is 1960-61, and the accounting period is from 1-4-1958 to 25-8-1958 question referred is :

"Whether on the facts and circumstances the Income-tax Appellate Tribunal was correct in holding that no capital gains taxable under the Indian Income-tax arose to the assessee ?"

2. The assessee was carrying on business of manufacture and sale of packing cases. Pursuant to a sub-contract which he with a firm called M/s. Moothadath and Sons, he supplied railway sleepers and timber to the firm during the period 1-4-1958 and 25-8-1959. The business resulted in heavy loss, which, as compared by the assessee, amounted to Rupees 87, 747. This was accepted by the Income-tax Officer, subject to some adjustments for inadmissible expenditure and depreciation.

3. The assessee had taken large advantages for the purposes of his business from one Shri P.R. Moothadath, one of the partners of the firm. Apparently, the assessee's business had completely broken; and he was unable to repay the amounts, due to Sri P.R. Moothadath. Consequently, by a deed dated 7-8-1959, the assessee transferred his business together with the factory, factory premises and all plant, machinery, etc., to M/s. M.P. Moothadath and Sons for the sum of Rs. 1,70,791-61. This was satisfied to the assessee as follows :

Amount due to Kerala Finance Corporation from the assessee to be discharged by the purchasers. Rs. 31,813.68

Amount due from the assessee to Sri P.R. Mothadath to be discharged by the Rs. purchasers	1,37,363.19.
Amount due to the purchasers from the assessee.	Rs. 1,620.76
	Rs.
	1,70,797.61

The written down value of the assets sold the assessee excluding the stores and spares was Rs. 89,090. The stores and spares valued at Rs. 5,300. Thus, there was a difference of Rs. 76,407. The Income-tax Officer found that this involved a profit of 15,887 under Section 10(2)(vii) of the Act, capital gain of Rs. 60,520. After adjusting this profit against the business loss of Rs. 23,090 for the year the net loss was determined as Rs. 7,203 under the head "business". This amount was deducted from the aforesaid sum of Rs. 60,520 to arrive at the capital gain taxable under Section 12-B of the Act. Accordingly the amount of capital gain was fixed at Rs. 53,817 and taxed by the Income-tax Officer by an order dated 30-3-1961.

4. The assessee filed an appeal from the aforesaid order and contended before the Appellate Assistant Commissioner that the transaction did not involve any sale, and that it, was only a surrender of the business in settlement of his debts and it did not attract Section 12-B of the Act. This contention was rejected; and the appeal was dismissed. The assessee filed a second appeal before the Appellate Tribunal, repeating the same contention. He also contended before the Appellate Tribunal that the consideration shown in the deed of transfer had nothing to do with the actual price of the assets surrendered, and that "the assets conveyed, if valued at the prevailing market rate, would have fetched only far less than the amount of debt", for discharging which the assets were transferred. The Appellate Tribunal seems to have been attracted by the latter contention; and it held :

"From the facts which we had set out earlier it appeared to us that due to the heavy financial obligation the assessee was under the mercy of his creditor. The assessee could not have had any voice in the fixation of any price and to call the settlement by which the liability was discharged by the taking over the assets a sale would be a misnomer. Moreover factually it would appear that the large indebtedness, which is taken as the sale consideration for the assets is due to the advantageous prices which the creditor had obtained from the assessee. We may refer to the differences in the price of Broad gauge and Meter Gauge sleepers referred to earlier. But for the weak financial position of the assessee and the dependence on the creditor for further finance, the assessee was left with no option but to supply to the creditor at lower prices.

In all these we do not consider that there were justifiable reasons for holding that the assessee had made a sale of his assets to his creditor and that there was a gain of Rs. 53,317 in the transaction."

5. There can be little doubt that the transfer of the business by the assessee to M/s. Moothadath

and Sons falls within the ambit of Section 12-B of the Act. The consideration recited in a document is not conclusive; and it is open to an assessee to establish that the real consideration is less than what is shown in the document. But in this case, there is no material on record to show that the amount mentioned in the document as consideration for the transfer is not the fair market value of the property on the date of the said transfer. On the other hand, the whole consideration of Rs. 1,70,797.61 shown in the document has been satisfied to the assessee in the manner stated in the document for liquidating three items of liabilities of the assessee. There is no case that these liabilities were not real. Except for a small amount of Rs. 1,620-76 they were liabilities which the assessee owed to third parties. There is no dispute about the written down value of the assets transferred. Under these circumstances, one conclusion alone is possible, and that is the one arrived at by the Income-tax Officer, and affirmed by the Appellate Assistant Commissioner. We must, therefore answer the question referred in the negative, that is against the assessee and in favor of the Department. In the circumstances of this case, we make no order as to costs.

6. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as required by Section 66(5) of the Act.

Answer accordingly.