

Upendra M. Dalal Vs. Dy. Cit

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Court : Mumbai

Decided On : Sep-04-2002

Reported in : (2004)83TTJ(Mumbai)828

Appeal No. : ITA No. 6202/Mum/1999 4 September 2002 A.Y. 1996-97

Appellant : Upendra M. Dalal

Respondent : Dy. Cit

Advocate for Pet/Ap. : V. H. Patil, *for the Assessee* Girish Dave, *for the Revenue*

Judgement :

ORDER

V.D. Wakharkar, A.M.

This appeal by the assessee is directed against the order of the learned Commissioner (Appeals), XI-D, Mumbai, dated 4-10-1999 in respect of the assessment year 1996-97. The grounds raised by the appellant are argumentative and narrative. In substance the assessee seeks to challenge taxation of capital gains arising out of sale of membership card of the Bombay Stock Exchange and levy of interest under sections 234A, 234B and 234C of the Income Tax Act; 1961.

2. We would first spell out the essential facts. The appellant is an individual. He was a member of the Bombay Stock, Exchange since 1971 and was allotted clearing number 691 by the stock exchange. On 1-11-1991 the appellant entered

into an agreement with M/s. Saurashtra Capital Services (P) Ltd. in regard to the sale of membership card of the Bombay Stock Exchange. The said agreement describes the assessee as the seller and the aforesaid company as the buyer. Clauses 1 to 5 of the said agreement are of relevance and are, therefore, reproduced below :

1. The seller, i.e., Mr. Upendra M. Dalal, shall nominate the buyer, i.e., Saurashtra Capital Services (P) Ltd., for the membership of the stock exchange, Bombay in his place for a consideration of Rs. 2,40,00,000 (Rupees two crores forty lakhs only).

2. Out of the agreed consideration of Rs. 2,40,00,000 (Rupees two crores forty lakhs only) the buyer on behalf of the seller shall pay the seller said sum of Rs. 40,00,000 (Rupees forty lakhs only) by pay order in favour of said Oman International Bank and a sum of Rs. 5,00,000 (Rupees five lakhs only) to the seller, aggregating to Rs. 45,00,000 (Rupees forty five lakhs only), (the receipt whereof the said seller hereby admits and acknowledges separately by the letter). The balance consideration of Rs. 1,95,00,000 (Rupees one crore ninety five lakhs only) shall be paid by the buyer to the seller as follows :

(a) The admitted liabilities of the seller pertaining to the transactions made subject to the bye-laws of the stock exchange, Bombay, shall be paid by the buyer to the stock exchange, Bombay. Such liabilities shall be assessed by the stock exchange, Bombay. The said payment shall not exceed the balance consideration of Rs. 1,95,00,000.

(b) After the payment made as mentioned in clause 2(a) above, the balance if any be paid by the buyer to the seller on or before 31-1-1995.

3. Simultaneously with the signing of this agreement, the seller shall execute the necessary papers for nominating the buyer as member of the stock exchange, Bombay.

4. In the event, the governing board of the stock exchange, Bombay rejects the nomination of the buyer, i.e., Saurashtra Capital Services (P) Ltd., then in that

event this agreement shall not be cancelled and the buyer, i.e., Saurashtra Capital Services (P) Ltd., shall be entitled to nominate another person or body corporate in its place and the seller shall file fresh nomination till finally accepted by Bombay Stock Exchange. Any profit and/or loss in the event of subsequent nomination shall be on the account of the buyer, i.e., Saurashtra Capital Services (P) Ltd., and seller would extend all co-operation to the buyer.

5. It is hereby expressly agreed and understood between the parties hereto, whether the buyer is admitted as a member of the Bombay Stock Exchange or not, the entire consideration of Rs. 2,40,00,000 as mentioned in para 2 hereinabove, shall be paid not later than 31-1-1995, by the buyer to the seller.'

3. During the assessment proceedings before the learned assessing officer, the assessee contended that any profit or gain made on sale of stock exchange card could not be brought to tax as capital gains. Reliance was placed on the decision of Honble Supreme Court in the case of Vinay Bubna v. Stock Exchange, Mumbai & Ors. : [1999]3SCR1222 in support of the plea that the membership card of Bombay Stock Exchange was a personal privilege conferred by the stock exchange on the share broker and did not constitute a capital asset within the meaning of section 2(14) of the Income Tax Act, 1961. The learned assessing officer relied upon the decision of the Tribunal, Mumbai Bench-B in the case of V.N. Cantor v. WTO in WTA Nos. 322 & 323/Bom/1993 wherein it was held that membership card of stock exchange in the case of a non-defaulting member was a capital asset. The assessing officer, therefore, held that the gains made on sale of membership card were liable to tax under the head capital gains. After deducting indexed cost of acquisition amounting to Rs. 92,730, he brought the amount of Rs. 2,39,07,270 to tax as long term capital gains.

4. The assessee carried the matter in appeal before the learned Commissioner (Appeals). Before the learned Commissioner (Appeals) reliance was placed on the aforesaid decision of Honble Supreme Court in the case of Vinay Bubna (supra) and also on the decision of Honble Bombay High Court in the case of Sejal Rikeen Dalal v. Stock Exchange, Bombay : AIR1991 Bom30 , wherein the Honble Bombay High Court held that membership of Bombay Stock Exchange was not a

transferable right and that it was a personal permission granted by the stock exchange to an individual member. This case related to share broker who died in an accident and on his death his right of nomination ceased and vested in the stock exchange. It is on these facts, Honble Bombay High Court held that there was no property in membership card. The learned Commissioner (Appeals) examined the terms and conditions on which the membership cards are issued and came to the conclusion that in case of non-defaulting member, the membership card is transferable to the nominee and as such it constitutes a valuable property. The learned Commissioner (Appeals) quoted in his order an extract from the decision of the Privy Council in the case of Official Assignee of Bombay v. K.R.P. Shroff & Ors. . The extract, as it appears at p. 3 of the order of the learned Commissioner (Appeals) reads as under :

'But although the rules are badly drawn and not in phraseology their result in the case of a member who has lost his membership for being a defaulter clearly enough is that he loses all interest both in the property of the association and his card. In such a case no interest is reserved in the defaulters card except members of the association who have suffered by his lapse in the rules sometimes called his creditors or to the association itself. This seems to their Lordships the result of rr. 18, 56, 57 and 62. The defaulting member himself has no interest in the result of the sale provided for under these rules nor can he require a sale to be made. The rules are there for the benefit of his 'exchange creditors' and are doubtlessly enforceable at their instance.'

The learned Commissioner (Appeals), therefore, held that a stock exchange card is always an asset and as long as the holder-member has not defaulted, it remains an asset in the hands of such owner-member. In the present case the assessee was not declared a defaulter, though there was a threat of his being so declared. But in fact, he was not declared as a defaulter. He entered into an agreement of sale and realised the sale price of Rs. 2.40 crores. The learned Commissioner (Appeals), therefore, held that the gains made on transfer of the membership card was a long term capital gain assessable to tax. He, however, allowed some relief in computation by directing that the market value of the card should be taken as Rs. 90,000 as on 1-4-1981 and the computation should be consequentially

revised. He also directed that the interest payable under sections 234B and 234C should be revised in the light of the revision in the assessee's income. Being aggrieved, the assessee is in appeal before us.

5. Before us, heavy reliance was placed by Shri V.H. Patil, learned authorized representative for the assessee on the decision of Wealth Tax Bench of Tribunal, Mumbai in the case of Dy. CWT v. Ashwin C. Shah & Ors. (2002) 76 TTJ (Mum) 823. It was argued that though the decision was delivered under the provisions of the Wealth Tax Act, 1957, the ratio thereof would apply even to income tax. The Wealth Tax Bench has held that Bombay Stock Exchange card is not liable to wealth-tax as it was not an asset within the meaning of section 2(e) of the said Act. The said decision was based on the decision of Honble High Court referred to earlier and the decision of the Honble Apex Court in the case of Stock Exchange, Ahmedabad v. Asstt. CIT : [2001]248ITR209(SC) . Shri Girish Dave, learned Departmental Representative, on the other hand, argued that the decisions relied upon by the learned authorized representative have no application to the facts of the present case as those applied to the cases which involved loss of right of nomination due to death or default of stock exchange card holders and that the decision under the Wealth Tax Act can not apply to income-tax as wealth tax involves annual levy while capital gains tax is a one time levy. It was also argued that definitions of a capital asset under the Wealth Tax Act and the Income Tax Act differ in content and scope.

6. The core issue involved in this case revolves around interpretation of the provisions of Bombay Stock Exchange Rules relating to membership and nomination. Rules 5 to 12 of the Bombay Stock Exchange Rules are of relevance and are reproduced below for facility of ready reference.

'Membership and Nomination

Membership a personal privilege

5. The membership shall constitute a personal permission from the exchange to exercise the rights and privileges attached thereto subject to the rules, byelaws and regulations of the exchange.

Right of membership inalienable

6. A member shall not assign, mortgage, pledge, hypothecate or charge his right of membership or any rights or privileges attached thereto and no such attempted assignment, mortgage, pledge, hypothecation or charge shall be effective as against the exchange for any purpose nor shall any right or interest in any membership other than, the personal right or interest of the member therein be recognised by the exchange. The governing board shall expel any member of the exchange who acts or attempts to act in violation of the provisions of this rule.

Right of nomination

7. Subject to the provisions of these rules a member shall have the right of nomination which shall be personal and non-transferable.

Right of nomination not to be exercised by former member

8. The right of nomination shall not be exercised by a former member who has been expelled or who has ceased to be a member under any rule, Bye-laws or regulation of the exchange for the time being in force.

Right of nomination of deceased or defaulter member

9. On the death of a member his right of nomination shall cease and vest in the exchange.

Forfeited or lapsed right of membership

10. When a right of membership is forfeited to or vests in the exchange under any rule, bye-law or regulation of the exchange for the time being in force it shall belong absolutely to the exchange free of all rights, claims or interest of such member or any person claiming through such member and the governing board shall be entitled to deal with or dispose of such right or membership as it may think fit.

Nomination by member

11. (a) A member of not less than three years standing who desires to resign may nominate a person eligible under these rules for admission to membership of the exchange as a candidate for admission in his place.

Provided that a member of less than three years standing who desires to resign may with the sanction of the governing board nominate his own son eligible under these rules for admission to membership of the exchange as a candidate for admission in his place.

Provided further that the governing board may, at its absolute discretion and in exceptional cases and for cogent reasons to be recorded in writing, permit by a special resolution, a member of less than three years standing, who desires to resign, to nominate a person as a candidate for admission in his place, subject to such terms and conditions as the governing board may in its absolute discretion think fit to impose.

Provided further that a member of less than three years standing may resign and exercise his right of nomination in favour of a company with the sanction of the governing board on the following conditions namely :

(i) He shall be a director of such company for a period of such number of years as would be brought to him three years standing had he not resigned from the membership.

(ii) He shall not hold less than 51 per cent of the paid up equity capital of the company for the period mentioned in sub-clause (i); and

(iii) The company is eligible for membership in accordance with rule 19A.

Nomination in case of a deceased member

(b) The legal representatives of a deceased member or his heirs or the persons mentioned in Appendix C to these rules may with the sanction of the governing board nominate any person eligible under these rules for admission to membership of the exchange as a candidate for admission in the place of the deceased member. In considering such nomination the governing board shall be

guided so as far practicable by the instructions set out in Appendix C to these rules.

Nomination in case of a defaulter

(c) The forfeited right of membership of a defaulter shall be restored to him if he be re-admitted as a member within six months from the date of default but if an application by a defaulter for re-admission be rejected by the governing board or if no such application be made within six months of the declaration of default the governing board may at any time exercise the right of nomination in respect of such membership.

Fresh nomination

12. If a nominee be not eligible under these rules or if a nominee be rejected by the governing board a fresh nomination may be submitted to the exchange.'

7. It would now be worthwhile to notice the interpretation placed upon the aforesaid provisions of Bombay Stock Exchange Rules and its implication for other laws.

8. The first case to be noticed is the decision of the Honble Apex Court in the case of Vinay Bubna v. Stock Exchange, Mumbai & Ors. (supra). In the said decision, the Honble Apex Court dealt with interpretation of rr. 16 to 43 of the Bombay Stock Exchange Rules. Rule 16 of the said rules has laid down the order of priority of satisfaction of dues of the defaulting member. The short-note of the said case reads as under :

'The order of priority laid down by the rule 16 of Stock Exchange Rules ensures that dues to the exchange or to the clearing house have first to be met before the balance amount can be utilised for payment of debts, liabilities, obligations, etc. arising out of any contract made by the former member. If the amount available is insufficient to pay all such debts, liabilities, etc. then the payment is to be made pro rata. If, however, any surplus still remains the same is to be disposed of or applied in such manner as the exchange in general meeting may decide. The High Court, was, therefore, right in coming to the conclusion that on a default being

committed the share broker ceases to become a member of the exchange and all his rights, privileges, etc. as a member come to an end. If he does not clear the dues within six months the governing body then has a right of nomination in respect of such membership. It will be incorrect to state that on the stock broker ceasing to be a member, he still retains any right or interest in the permission which has been granted to him by the exchange to carry on business as a member. The membership card of a share broker is not his personal property which, on default being committed by him and his ceasing to be a member, can be sold and the proceeds be distributed amongst his creditors. Rules 53 and 54 leave no manner of doubt that the members right of membership vests in the exchange after he is declared defaulter. Not only is rule 16 not illegal, arbitrary or unjust but the same is, on the other hand, framed in such a manner that the hardship which may be caused by the default committed by an erstwhile member is mitigated. There is nothing unfair or unjust in rule 16 providing that the first priority from out of the sale proceeds given to the debts, liabilities, obligations and claims arising out of the contract made by the erstwhile member. Even though at the time when the nomination is made by the stock exchange of the vacancy which has been created the erstwhile member had no interest, in law, therein, nevertheless, rule 16 makes a provision by providing for payments being made for clearing the debts, etc. of the erstwhile members. But for rule 16, in other words, creditors like the appellant would not have a ray of hope of receiving any money realised by the stock exchange on the vacancy being created by reason of default of the stock broker. In view of this it is not possible to accept that the rule 16 is in anyway bad in law, The High Court rightly came to the conclusion that once a defaulting member ceases to be a member of the stock exchange no interest in his card remains and the same cannot be regarded as his asset and furthermore rr. 16 and 43 are not illegal, arbitrary or void.'

It would be clear from the aforesaid decision that in case where the member ceases to be a member of the stock exchange due to default, no interest in his card remains and the same cannot be regarded as an asset. The ratio of the said decision would not apply to the facts of the present case where the card holder was not a defaulting member.

9. The second case to be noticed is the decision of the Honble Bombay High Court in the case of Mrs. Sejal Rikeen Dalal & Ors. v. Stock Exchange, Bombay & Anr. (supra). The learned authorized Representative for the assessee placed much reliance on para 10 of the said decision, which reads as under :

'10. In order to decide whether there is any property in the membership of the stock exchange, it is necessary to refer to rules relating to membership of the stock exchange. Under rule 5, the membership shall constitute a personal permission from the exchange to exercise the rights and privileges attached thereto subject to the rules, bye-laws and regulations of the exchange. The membership, therefore, is not a transferable right. It is only a personal permission granted by the stock exchange to an individual member. This is brought out further by rule 6 which states that the right of membership is inalienable. The membership rules give a member a right of nomination which shall be personal and non-transferable. This right under rule 11 can be exercised by a member of not less than 7 years standing who desires to resign. He may in turn nominate a member as set out in rule 11. In the case of a deceased member, under rule 9, on his death, his right of nomination ceases and vests in the exchange. There is, therefore, no property in membership.'

The aforesaid decision related to a case where one Pradip Harkishandas Dalal was a member of the stock exchange, Bombay. He died in an air crash. The legal heirs appointed Smt. Sejal Dalal, the daughter-in-law of Pradip as the nominee who applied for transfer of the card of the stock exchange. The governing body of the stock exchange declined to grant the permission for transfer of the card to Smt. Sejal Dalal and the Honble Bombay High Court held that the rules enabling the governing body to reject an application of a nominee were not ultra vires the constitution and the order of the governing body could not be faulted.

10. The next case to be noticed is the decision of the Honble Supreme Court in the case of Stock Exchange, Ahmedabad v. Asstt. CIT (supra). This was a case in which one Rajesh Shah who was a member of Ahmedabad Stock Exchange died on 7-1-1994. The governing body of Ahmedabad Stock Exchange declared Rajesh Shah a deemed defaulter and under rule 9 the membership rights which vested in

the stock exchange were sold for a price of Rs. 25 lakhs. The Income Tax Authorities sought to attach the sale proceeds under section 281B of the Income Tax Act. The Honble Supreme Court held that the membership of the stock exchange was not a private asset. It was merely a privilege granted to a member and as per rule 9 on the death or default of a member, his right of nomination shall cease and vest into the stock exchange. This was the case of a share broker who died and his card vested in Ahmedabad Stock Exchange. The Honble Apex Court thus held that in these circumstances, the card held by the deceased could not be attached under section 281B.

11. The learned authorized representative for the assessee also placed reliance on the decision of the Special court (Trial of Offences Relating to Transactions in Securities) at Bombay in the case of Stock Exchange, Mumbai v. The Custodian & Ors, in Miscellaneous Application No. 710 of 1999, order dated 9-6-2001. The special court held that the membership was a personal privilege and was not attachable as a property. This case related to a broker who had defaulted and attempts were made to recover dues by sale of the stock exchange card in the case of the defaulting member.

12. As stated earlier, the learned authorized representative for the assessee place heavy reliance on the decision of the Tribunal, Wealth Tax Bench, Mumbai in the case of Dy. CWT & Ors. v. Shri Ashwin C. Shah & Ors. (Order dated 10-12-2001) (supra). In the said decision, the Wealth Tax Bench of the Tribunal took note of the aforesaid decisions and held that the right and interest in the Bombay Stock Exchange card did not constitute an asset within the meaning of section 2(e) of the Wealth Tax Act. The contention that was advanced by the learned Departmental Representative before the Wealth Tax Bench that the ratio of the aforesaid decisions was confined to cases of deceased or defaulting members of the Bombay Stock Exchange and that it was not applicable to cases of non-defaulting continuing members, was not found acceptable by the Wealth Tax Bench. The learned Departmental Representative had placed reliance on the decision of the Special Bench of the Tribunal in the case of Jagan Nath Sayal v. Asstt CIT (2000) 14 DTC 558 (Mum) : (2000) 72 ITD 1 (Del) wherein membership card of the Delhi Stock Exchange was held to be an asset for the purpose of Wealth Tax Act. The

Wealth Tax Bench, Tribunal, Mumbai distinguished the rules of Delhi Stock Exchange from those of Bombay Stock Exchange and held that the ratio of the Tribunal, Special Bench decision was not applicable. Before us, heavy reliance was placed on the observation of Wealth Tax Bench in the said order and it was argued that what cannot constitute an asset for the purpose of wealth-tax it could not be asset for the purpose of the Income Tax Act, 1961.

13. The learned Departmental Representative referred to the provisions of section 47(xi) of the Income Tax Act. This clause was inserted by the Finance Act, 1997, with effect from 1-4-1998. It provides that capital gains shall not be chargeable under section 46 in respect of any transfer made on or before the 31-12-1998 by a person 'of a capital asset being membership of a recognised stock exchange to a company in exchange of shares allotted by that company to the transferor'. The Explanation to the clause provides that membership of a stock exchange means membership of a stock exchange recognised under the Securities Contracts (Regulation) Act, 1956. The learned Departmental Representative argued that but for this provision inserted by the Finance Act the transfer of stock exchange card would mean transfer of a capital asset within the meaning of section 45. The learned authorized representative referred to the paras 25 to 28 of the order of the Wealth Tax Bench, which dealt with the issue and the Wealth Tax Bench held that whether the asset was exempt or not exempt from tax affords no clinching evidence of its taxability.

14. The learned Departmental Representative argued that one cannot attribute redundancy to legislature and but for the provisions of section 47(xi) of the Income Tax Act, 1961, transfer of stock exchange card is intended to attract provisions of capital gains tax. He quoted the following part of the instructions issued by the CBDT on the provisions of the Finance Act, 1997(1998) 230 ITR 72.

'Encouraging corporatisation of stock brokers card

28.1 Under the existing provisions of section 45 of the Income Tax Act, 1961, corporatisation of membership of recognised stock exchanges involves transfer of a capital asset and is, therefore, subject to capital gains tax.

28.2 In order to encourage more brokers to corporatise, increase their liquidity and consequently their volume of trading resulting eventually in giving a boost to the capital markets, the Act exempts from tax capital gains arising on corporatisation of membership of a recognised stock exchange by inserting clause (xi) in section 47 of the Income Tax Act. A new sub-section 47A(2) has been inserted providing for withdrawal of such exemption if the transferor retains shares allotted on transfer of membership for less than three years. This exemption will be allowed only in respect of corporatisation effected on or before the 31-12-1997.

28.3 The amendment will take effect from the 1-4-1998, and will, accordingly, apply in relation to the assessment year 1998-99 only.'

15. The learned authorized representative, on the other hand, stated that legislature on many occasions inserts provisions for clarification and in any case there can be membership card of some stock exchanges other than Bombay Stock Exchange which may constitute an asset under the respective rules of the concerned stock exchange.

16. We have considered the rival submissions and have perused the records. Section 2(14) of the Income Tax Act, 1961 defines capital asset to mean property of any kind held by an assessee, whether or not, connected with his business or profession, but does not include any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession, and personal effects, etc. This is a definition which is different from the definition of assets contained in section 2(e) of the Wealth Tax Act, 1957. From the catena of decisions discussed earlier, it is quite clear that when a member of the Bombay Stock Exchange commits a default or he dies, his right of nomination lapses and there remains no property or an asset which could be said to be held by the defaulting member or the deceased member. It is also correct to say, as has been held by the Wealth Tax Bench of Tribunal, Bombay, that even in the hands of the non-defaulting continuing member mere possession of a stock exchange card does not amount to possession of an asset, as the card merely grants a personal privilege. However, it is difficult to agree with the learned authorized representative for the assessee that the personal privilege enjoyed by the member of the Bombay Stock Exchange is

identical to the privilege enjoyed by members of professional bodies, such as lawyers and advocates who are members of the Bar Council of India. Membership of the Bar Council of India is not transferable by nomination and at all stages and at all times it remains a personal privilege, unlike the membership of Bombay Stock Exchange which is transferable by such members through nomination subject to certain conditions and subject to approval of the governing body. The moment the holder of the membership card of stock exchange decides to nominate another person as member and submits an application for nomination to the stock exchange authority, the personal privilege gets converted into a valuable asset. This is very clear from the rules of Bombay Stock Exchange which provide for transfer of cards through nomination. This is also clear from the language in the agreement entered into by the assessee on 1-11-1994 wherein the assessee has been described as seller and M/s. Saurashtra Capital Services (P) Ltd. as the buyer. What seller sells and buyer buys is an asset, a valuable property and the rights embodied in such a card cease to be a mere personal privilege. To place any other interpretation would amount to ignoring the realities of the ground. The members of the Bombay Stock Exchange are known to advertise their intention to sell the card and they call for the bids for which the parties can be nominated. No doubt, such transfer is subject to the conditions laid down in rr. 9 and 43 of the Bombay Stock Exchange Rules. However, these conditions do not take away completely, though they may restrict, the value of the important right, which has been passed through nomination. Thus rights and interests in the stock exchange card are not attachable in garnishee proceedings. They are not liable to wealth-tax by way of an annual levy as held by the Wealth Tax Bench of the Tribunal, Mumbai. Similarly the card is not attachable in the case of defaulting or deceased member, because the rights in the cards vest in the stock exchange in case of default or death. However, when such a holder of stock exchange card makes an application for nomination with the consent of the person to be nominated, the privilege enjoyed under the said card does not remain a personal privilege. The year of acquisition of such property would, however, be traceable to the card and therefore, the time of acquisition is the time when holder acquired the stock exchange card. In the present case, the assessee entered into an agreement on 1-11-1994 for nominating for a price M/s. Saurashtra Capital Services (P) Ltd. as a

member of the stock exchange and by entering into such an agreement, what the assessee transferred was a valuable right of carrying on the business of a share broker in the Bombay Stock Exchange. The stock exchange card has been transferred in the present case for a consideration of Rs. 2.4 crores. The assessee selected the nominee. The assessee was not declared a defaulter. He had a right to nominate. The Bombay Stock Exchange subsequently approved the nomination. What the assessee transferred was a valuable asset for which he realised the price of Rs. 2.4 crores. When the member puts his membership for sale and realises a substantial value, it is difficult to deny that a valuable asset has been transferred. When membership of the Bombay Stock Exchange is put on sale through the nomination, a personal privilege is converted into an asset and the consequential gain is exigible to tax. This would be in line with the legislative intent as apparent from the provisions of section 47(xi) and the CBDT circular quoted in para 14 above. This would also be in conformity with the ground realities which show that membership cards are being sold for substantial consideration.

17. In view of the foregoing, we find no infirmity in the order of the learned assessing officer and the learned Commissioner (Appeals) on this point. The grounds raised by the assessee in regard to taxability of long term capital gains are accordingly rejected.

18. The next ground relates to levy of interest under sections 234A, 234B and 234C. These are consequential grounds and do not need any specific order.

19. In the result, the appeal of the assessee is dismissed.