

Suwardhan Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT

Decided On : Dec-22-1997

Reported in : (1998)67ITD104(Bang.)

Appellant : Suwardhan

Respondent : Assistant Commissioner of

Judgement :

1. This is an appeal by the assessee pertaining to the assessment year 1993-94.
2. Ordinarily, the assessee-firm consisted of two partners, viz., Mrs.

Anuradha Maruthi Gokarn (hereinafter referred to as Mrs. AMG) and B.Chandrasekhar (hereinafter referred to as BC, for short) and also another partner, viz., Smt. Shanthabai Vinayaka Gokarn. The above partnership came into existence by a partnership deed dated 23-7-1986.

The name of the partnership was 'M/s. Suwardhan'. As Smt. Shanthabai V.Gokarn retired from 1-7-1988, by a partnership deed, dated 17-10-1988, the other two partners Mrs. AMG and BC continued the partnership. By a notice dated 30-1-1995 under section 142(1), which was served on the assessee on 1-2-1995, Compliance of the assessee was sought for. There was no response. Consequently, a survey was conducted on the business premises of the assessee. During the course of the survey it came to light that the firm had been dissolved and the business was taken over by Mrs. AMG. Mrs. AMG was summoned to

produce a copy of the dissolution deed. She appeared and filed a copy of the dissolution deed. A perusal of the same indicated that the partnership had been dissolved on 1-4-1992 and that the assets and liabilities were taken over by the lady. A proposal to apply section 45(4) was sent and, in response, a return of income, for the assessment year under consideration, came to be filed declaring 'Nil' income. Along with the return a letter was enclosed stating "please find herewith enclosed return of income in respect of the firm M/s. Suvardhan for the assessment year 1993-94.

This is in response to your notice under section 142(1)." Subsequently another notice under section 142(1) along with summons under section 131 was sent to the firm requiring its continuing partner Mrs. AMG to appear. She appeared on 28-12-1995. A statement was recorded from her regarding M/s. Suvardhan. While recording the statement, to a question put to her, she confessed that there was a dissolution deed and that the assets were taken over by her at book value. During the course of survey, a valuation report was found in respect of the assets of the firm. This was dated 10-4-1992. Since the dissolution took place on 1-4-1992, Mrs. AMG was asked whether the valuation report could be considered to be representing the value of assets as on 1-4-1992 of the firm and she replied in the affirmative. In the assessment order, the Assessing Officer has reproduced one of the questions put to Mrs. AMG and her answer to the question. They run as : Q. "According to the Income-tax Act Section 45(4) whenever there is a dissolution and the assets are distributed capital gains need to be charged, in your case also the firm was dissolved and all assets and liabilities were taken over by you. Therefore please tell me whether you have offered capital gains to tax ?" "Because there is no distribution of assets. The retiring partner was a partner by virtue of bank's insistence of some techno-commercial support to the fund. He did not contribute any capital when he joined the partnership and nothing has been paid to him at the time of dissolution." Subsequently, a proposal for best judgment assessment was sent on 29-1-1996 detailing the evidence and clearly mentioning the provisions of section 45(4) to Mrs. AMG, as the continuing partner. It was also informed that it was intended to charge capital gains in the hands of the firm for assessment year 1993-94 in respect of assets transferred by the firm on the basis of valuation report found at the time of survey. Objections were also called for to

the proposal. On behalf of the assessee, a letter dated 9-2-1996 was filed stating : "Please refer to your above cited communication. Under instructions from our above client, we object to the proposed assessment vide order dated 29-1-1996. The learned Asstt. Commissioner proposes to pass an ex parte assessment/best judgment assessment under section 144 of the Act for the relevant assessment year on the ground that there was no return of income was filed in response to the notice under section 142(1) of the Act issued on 31-1-1995. In this connection we wish to submit that no notice under section 142(1) dated 31-1-1995 was served on the assessee calling upon to file the return of income by 8-2-1995. The only notice received by the assessee was the notice dated 30-1-1995 under section 142(1) of the Act wherein a compliance of the notice on 8-2-1995 was sought for.

However the said notice was a blank notice without spelling the requirement. Hence, there was no direction to the assessee that the return should be filed on or before 8th of February, 1995. In the circumstances, no default of non-compliance could be suggested. On the other hand, the assessee had filed the return on 11-12-1995 declaring nil income for the relevant assessment year. Without prejudice to the above submissions, it is submitted that the assessee firm was dissolved with effect from 1-4-1992 vide Dissolution Deed dated 25-3-1992. Prior to the dissolution the firm was constituted with two partners Smt. Anuradha Maruthi Gokarn and Sri. B. Chandrasekhar. The effect of the dissolution was that the business as a going concern was continued by Smt. Anuradha Maruthi Gokarn in the capacity of sole proprietrix, and Shri B. Chandrasekhar has ceased connection with the business. The business as such has not been disrupted and the assets and liabilities of the erstwhile firm had not been distributed. In fact Shri B. Chandrasekhar has not paid anything either in kind or in cash. Thus there was no distribution of an asset which was one of the condition required to be satisfied for invoking the provisions of section 45(4) of the Act.

In this regard it may kindly be appreciated that the assets and liabilities of the firm had continued to be kept in tact which is evident from the balance sheet of the firm as on 31-3-1992 and also the balance sheet of the proprietary business as on 31-3-1993 (related to the relevant assessment year).

Thus the provisions of section 45(4) of the Act cannot be applied.

In this connection we would like to draw your kind attention to the decision of the Bangalore Bench, Bangalore of the ITAT, in Mangalore Ganesh Beedi case ITA No. 591/Bang./94 dated 14-11-1995 wherein it has been held that no capital gains could be deemed, by invoking the provisions of Section 45(4) of the Act where there was in fact no actual distribution of assets, consequent on dissolution. A copy of the judgment is enclosed.

Accordingly it is requested that the proposed action may kindly be dropped. The firm have no income for the relevant assessment year as the dissolution had taken place on the very beginning of the financial year. In fact the income of the business had rightly been offered in the hands of the proprietrix Smt. Anuradha Maruthi Gokarn for the assessment year 1993-94 and she had been assessed to tax accordingly.

In the circumstances, the proposed assessment on the firm may kindly be dropped." The Assessing Officer examined the above objections of the assessee to the proposed assessment under section 144. He was of the view that though no return was called for by notice under section 142(1) dated 31-1-1995, the assessee did file a return along with the letter stating that the return was filed in response to the notice under section 142(1). Again on 13-12-1995 another notice under section 142(1) was issued calling for details of assets transferred to Mrs. AMG on dissolution of the firm and there was response from the assessee. In response to the third notice under section 142(1) dated 30-1-1996 along with the proposal for best judgment assessment, there was response from the assessee. The assessee filed a nil return. It was the contention on behalf of the assessee that there was no distribution of assets on account of dissolution of the firm and in order to invoke the provisions of section 45(4) there should first be distribution of the assets. But the Assessing Officer was of the view that nowhere in the section it was stated that the distribution of assets must be equal. He examined the order of the Tribunal in Mangalore Ganesh Beedi Works v.Dy. CIT [IT Appeal No. 591 (Bang.) of 1994 dated 14-11-1995], and came to the conclusion that the facts were different. He, finally, computed the capital gains on the distribution of the assets

consequent on the dissolution of the firm M/s. Suvardhan, and brought a sum of Rs. 17,30,520 as deemed short-term capital gains under section 45(4) of the Act. The Assessing Officer also charged interest under sections 234A, 234B & 234C of the Act. The assessee appealed.

3. To the contention that the original notice under section 142(1) had not called for filing of the return and, therefore, there was no failure to furnish the return by the due date, the CIT(A) held that it was settled law that a wrong reference to the power under which an order was made did not per se vitiate the order if there was some other power under which the order could lawfully be made. The CIT(A) stated that it was a fact that the notice under section 142(1) dated 30-1-1995 did not speak of filing of a return and that the assessee did not respond to the notice. The CIT(A) held that assuming that the earlier notice under section 142(1) did not call for filing of return, the return filed on 11-12-1995 could not be taken as one filed under section 139(1)/139(4)/142(1). The CIT(A) found that the only time that a return was asked to be filed under section 142(1) was vide notice under section 142(1) dated 29-1-1996 and no return had been filed in response to that notice. Therefore, legally speaking, the assessee had not filed a return under any of the above three sections. The CIT(A), therefore, justified the order passed under section 144. On the question of applicability of section 45(4) and bringing to tax short term capital gains, it was the contention of the assessee before the CIT(A) that though section 45(4) was amended providing for assessment of profits or gains arising from the transfer of capital asset by way of distribution of capital assets on dissolution of the firm w.e.f.

1-4-1988, there was no corresponding amendment to section 2(47) to provide that distribution of capital asset on dissolution of firm amounted to transfer. Reliance was placed on a decision of the Jabalpur Bench of the Tribunal in Asstt. CIT v. Thermoflincs India [1997] 60 ITD 554. The CIT(A) distinguished the decision of the Tribunal. The CIT(A) referred to the judgment of the Hon'ble Supreme Court in the case of A.L.A. Firm v. CIT [1991] 189 ITR 285/55 Taxman 497. The CIT(A) then went through the provisions of section 45(4). He found that Transfer of Property Act did not cover the transactions mentioned in section 45(4).

He also found that section 2(47) of the IT Act did not specify that such a transaction is 'transfer'. However, he noted that the definition of 'transfer' in section 2(47) was an inclusive one and, therefore, there was nothing which prevented the Legislature to provide by a fiction of law that the profits or gains from certain transactions were to be assessed as income of the firm, treating such transactions as transfer for the purpose of computation of capital gains as per section 48 of the Act. According to him, section 45(4) was a deeming provision.

According to him, it was an accepted position in law that one of the main purposes of such deeming provisions was to provide that something which was not otherwise covered by the general definition of a particular term was also deemed to be covered by it for the specific purpose for which such deeming provision was made. The purpose of section 45(4) was to deem certain activity/transaction which was covered by the definition of the word 'transfer' under section 2(47) as also transfer for the limited purpose of computation of capital gains.

The CIT(A) also discussed the argument of the assessee that section 45(4) envisages two conditions, viz., (a) dissolution of the firm and (b) distribution of capital assets and that the two conditions were to be satisfied cumulatively. The CIT(A) went through the provisions of the deed of dissolution. According to him, the deed of dissolution would show that the arrangement was that BC was to retire from the firm taking the balance to his credit as on 31-3-1992 together with profit upto that date, thereby bringing an end to the partnership. Mrs. AMG was to continue the business as per proprietary concern. In such an arrangement, the division or distribution of assets could be only in such a way that the business assets were not destroyed. The properties involved were building and plant and machinery and a division or distribution of such assets could be done only by allotment of the assets to such person who was to take over the business and the other party being paid such amount as was considered necessary to compensate him/her for foregoing his/her right in the assets. The CIT(A) observed that this was a case of transfer by way of distribution of capital assets on dissolution of the firm as contemplated in section 45(4) and, therefore, the profits or gains therefrom was chargeable to tax. There was another contention on behalf of the assessee that there could be two types of valuations, one for the purpose of availing loan from

banks and another for the purpose of income-tax/wealth tax. Relying on the decisions of the Madras High Court in Coimbatore Spg. & Wvg. Co.

Ltd. v. CIT [1974] 95 ITR 375 and Tip Top Plastic Industries (P.) Ltd. v. ITO [1995] 214 ITR 778 and observed that the observations of the learned Judges would apply with equal force in respect of the firm that the valuation of the building and machinery by a registered valuer should be ignored as it was for availing loan from the bank and that there should be another valuation showing lower value for the assets for the purpose of income-tax. He, therefore, held that the Assessing Officer was correct in adopting the value as per the report dated 15-4-1992 of the registered valuer, as the fair market value of the property as on 31-3-1992 and as the full value of the consideration for the purpose of section 48 in computation of profits and gains from transfer by way of distribution of assets on the dissolution of the firm, thereby rejecting the contention on behalf of the assessee that the valuation of assets by the registered valuer in his report dated 15-4-1992 was for the purpose of availing bank loans and did not reflect the market value. He also distinguished the decision of the ITAT, Bangalore Bench in the case of Mangalore Ganesh Beedi Works (supra) relied on by the assessee. The CIT(A) also upheld, in principle, the levy of interest under sections 234A, 234B and 234C of the Income-tax Act, 1961. Aggrieved, the assessee is on further appeal before us.

4. The first issue to be decided is whether the best judgement assessment passed by the Assessing Officer is justified or not. It is the contention of the learned counsel for the assessee that the return filed by the assessee, in this case, is beyond the time allowed under section 142(1) and, therefore, it is a belated return. Hence, such a return has to be construed as an invalid return either under section 139(1) or under section 139(4). The assessment has thus become an income escaped assessment. Therefore, a notice under section 148 should have been issued. No notice under section 148 is issued. Therefore, it is the contention of Shri Parthasarathi that the ex parte assessment order passed under section 144 in this case without issue of a notice under section 148 is invalid and has to be cancelled. In support, the learned counsel for the assessee relied on an order of the Hyderabad Bench of the Tribunal in the case of Dr. Vijay Kumar Datla v. Asstt.

CIT [1996] 58 ITD 339. The learned departmental representative, on the other hand, relied on the orders of the authorities below.

5. On a careful consideration of the rival submissions, we see that there is no infirmity in the order of the Assessing Officer passed under section 144 of the Act. The facts as found in the assessment order as well as in the order of the CIT(A), which have been narrated by us above, are not in the realm of dispute. The CIT(A) had justified his conclusion by facts and also on the basis of case laws. Nothing more than a decision of the Hyderabad Bench in Dr. Vijay Kumar Datla's case (supra) has been brought before us by the learned counsel for the assessee. We have gone through the decision of the Tribunal (Hyderabad Bench). It is held therein : "The procedure for levying the tax is laid down in the Act by casting a statutory obligation upon the assessee to file a return voluntarily under section 139(1) on or before the due date within the assessment year or by issuing a notice to the assessee calling upon him to file it. Such a notice was also to be issued before the close of the assessment year as was prescribed under section 139(2) prior to 1-4-1989. Some action within the assessment year was a must. Though the provisions of section 139(2) were deleted by the Amendment of 1987 with effect from 1-4-1989 and this requirement was inserted in section 142(1) instead, the requirement of issuing notice to initiate proceedings was not taken away. Under the general scheme of the Act, the proceeding to assessee income of the previous year must start in the assessment year itself. This could be either by the assessee filing a suo motu return or by the Assessing Officer issuing a notice before the end of the relevant assessment year. If no such intimation has taken place during the assessment year, it would be a case of escaped assessment and, therefore, to proceed with the assessment, a notice under section 148 is compulsorily to be issued empowering the Assessing Officer with jurisdiction.

In the instant case, the assessee had not filed the returns suo motu within the time prescribed under section 139(1), and the revenue had not issued any notice under section 142(1) before the end of the assessment year and the returns furnished by the assessee on 22-12-1993 had been filed beyond the time limit prescribed under section 139(4) and were rightly treated to be invalid by the Assessing Officer. These were cases of 'escaped assessment' under section 147 and, therefore, the

assessments completed without issuing a notice under section 148 were invalid and bad in law." We find that the facts of the present case are different from the facts considered by the Hyderabad Bench of the Tribunal except that in this case also the assessee has not filed return of income voluntarily and the Assessing Officer issued notices under section 142(1) and the return filed by the assessee in response to the notice under section 142(1) issued on the third time is not valid. But, under the provisions of section 144, the Assessing Officer is empowered to pass a best judgment assessment if any person (a) fails to make the return required under sub-section

(1) of section 139 and has not made a return or a revised return under sub-section

(4) or sub-section

(5) of that section, or (b) fails to comply with all the terms of a notice issued under sub-section

(1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or (c) having made a return, fails to comply with all the terms of a notice issued under sub-section

(2) of section 143, after taking into account all relevant material which he has gathered. He shall make an assessment after giving the assessee an opportunity of being heard of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment. In this case, the assessee has not filed the return voluntarily. The Assessing Officer issued several notices under section 142 requesting the assessee to file all the details. In response to that, the assessee filed return which is beyond the period. One of the partners appeared before the Assessing Officer. She was examined the assessment was made under section 144 after taking into consideration all the details gathered by the Assessing Officer. The decision of the Hyderabad Bench of the Tribunal on which the learned counsel for the assessee has relied does not support the proposition of law canvassed by the learned counsel for the assessee that the assessment is bad in law because the Assessing Officer has passed the best judgment assessment without issuing notice under section 148 and that,

therefore, this should be treated as a case of assessment of escaped income. The right of the Assessing Officer to has assessment under section 144 if her amendments to file return, we find, is not at all considered by the Hyderabad Bench of the Tribunal in the above decision. Hence, we hold that the best judgment assessment passed under section 144 is valid in law.

6. The next point to be decided in this case is whether any capital gains is exigible. As stated earlier, the partnership known as M/s.

Suvaradhan came into existence by a partnership deed dated 17-10-1988 between Mrs. AMG and BC. During the survey conducted in the business premises it came to light that the firm had been dissolved and the business was taken over by Mrs. AMG. Clause 15 of the deed of partnership dated 17-10-1988, a copy of which has been furnished by the learned counsel for the assessee, states as under : "The retiring partner or the legal heirs of the deceased partner as the case may be, shall be entitled to be paid only the balance standing to the credit plus/share of profits/losses up to the date of retirement/death and they shall not be entitled to claim any amount towards the share in the goodwill of the firm." A copy of the dissolution deed dated 23-3-1992 has been filed before us. Clause 3 of the above deed states : "Mr. B. Chandrasekhar, the retiring partner shall be entitled to be paid the balance standing to his credit as on 31-3-1992 together with profit upto that date in one or more instalments as the parties hereto may mutually agree." From the above terms of the dissolution deed, the Assessing Officer came to the conclusion that capital gains was exigible under section 45(4) of the Act. Section 45(4) is as follows : "The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer." When Mrs. AMG who took over the assets and liabilities of the firm was examined she stated that she took over them at book value. In para 2 above we have reproduced one of the questions put

to Mrs. AMG and her reply, at the time of survey. It is the contention of the learned counsel for the assessee that there was no transfer or distribution of capital assets on dissolution of the partnership firm because there was no corresponding amendment to the definition of 'Transfer' under section 2(47) of the Income-tax Act. When there is no transfer, there is no justification for assessing any capital gains under section 45(4). The learned counsel placed reliance on the definition of the word 'Transfer' under section 2(47) of the Act. The sub-section states : (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him; such conversion or treatment; or (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1982 (4 of 1982); or (vi) any transfer (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property." Clauses (v) & (vi) above were added by the Finance Act, 1984, w.e.f.

1-4-1988. The learned counsel for the assessee also placed reliance on the decision of the Hon'ble Supreme Court of India in the case of Malabar Fisheries Co. v. CIT [1979] 120 ITR 49/2 Taxman 409. He further placed reliance on the decision of the Bangalore Bench of the Tribunal in the case of Mangalore Ganesh Beedi Works (supra). Again, he referred us to the decision of the Jabalpur Bench of the Tribunal in the case of Thermoflics India (supra). The learned departmental representative, on the other hand, strongly supported the orders of the authorities below.

7. We have heard the rival submissions on this point. We have also perused the cases laws relied on on behalf of the assessee. The Hon'ble Supreme Court observed in its judgment in Malabar Fisheries Co.'s case (supra) thus : ". . . Dissolution of a firm must, in point of time, be anterior to the actual distribution, division or allotment of the assets that takes place after making accounts and discharging the debts and liabilities due by the firm. Upon dissolution the firm ceases to exist : then follows the making up of accounts, then the discharge of

debts and liabilities and thereupon distribution, division or allotment of assets takes place inter se between the erstwhile partners by way of mutual adjustment of rights between them. The distribution, division or allotment of assets to the erstwhile partners, is not done by the dissolved firm. In this sense there is no transfer of assets by the assessee (dissolved firm) to any person. It is not correct to say that the dissolution of assets takes place eo instanti with the dissolution of the firm or that it is effected by the dissolved firm." In our considered opinion, the above judgment of the Hon'ble Supreme Court has no application here. Firstly, the Hon'ble Supreme Court decided the above case before the insertion of section 45(4) of the Income-tax Act.

Secondly, there was no distribution of assets in the case decided by the Supreme Court whereas there is dissolution, evidenced by a dissolution deed, and distribution of assets among the partners of the firm. The same is the position in the case of Mangalore Ganesh Beedi Works (supra).

In the case decided by the Jabalpur Bench of the Tribunal in Thermoflics India's case (supra), it is held : "From decisions of Supreme Court in the case of CIT v. Dewas Cine Corpn. [1968] 68 ITR 240, CIT v. Bankey Lal Vaidya [1971] 79 ITR 594 and in Malabar Fisheries Co. v. CIT [1979] 120 ITR 49, it was clear that on dissolution of the firm and upon the consequent distribution of assets amongst the partners, there is no transfer of asset within the meaning of section 2(47)(b) and, thus, there is no liability of capital gains tax. Section 45(4) inserted by the Finance Act, 1987, with effect from 1-4-1988, also provides that transfer of capital asset is a sine qua non for the applicability of sub-section (4) of section 45. The capital gains tax will be chargeable in the previous year in which the transfer takes place. The definition of word 'transfer' in section 2(47) is also amended by the Finance Act, 1987 with effect from 1-4-1988 and sub-clauses (v) and (vi) were inserted. However, even these clauses do not cover the case of dissolution of the firm. The other clauses (i) to (iv) are already considered by the Supreme Court in the aforesaid cases. Therefore, the amendment in the definition of 'transfer' does not cover the case of distribution of assets among the partners on the dissolution of the firm. Sub-section (4) of section 45 was inserted by the Finance Act, 1987, with effect from 1-4-1988 and on the same date, there was insertion of sub-clauses (v)

and (vi) in section 2(47) but these two clauses do not cover cases of distribution of assets on the dissolution of the firm. Thus, the definition of the word 'transfer' was not amended or modified, so as to enlarge the definition of word 'transfer' to cover the cases of distribution of assets on the dissolution of firm.

Omission of sub-section (2) of section 45 with effect from 1-4-1988 also would not make any difference. This sub-section before its omission provided exemption from capital gains tax in respect of distribution of capital assets on the dissolution of the firm, body of individuals or association of persons. However, as the distribution of assets on the dissolution of firm is not 'transfer' so as to make the assessee liable for capital gains tax, and when assessee is not liable to capital gains tax, there is no necessity for claiming any exemption under section 47(2)." In our considered opinion, the above decision also has no application to the facts of the case on hand. In the case decided by the Jabalpur Bench, there was a partnership firm consisting of three partners and one of the partners expired on 28-1-1989 and on the same date another partner retired. Consequently, the remaining partner took over all the assets and liabilities of the firm as they then stood. There is no question of distribution of assets amongst the three partners out of them one died and another retired. In this case, there is a dissolution of the partnership firm run by two partners evidenced by a dissolution deed and there is distribution of assets among the two partners as per the dissolution deed. We have already quoted the relevant clauses of the dissolution deed. In this case, admittedly, Mrs. AMG has taken over the entire assets and liabilities of the partnership firm. It is, therefore, clear that there is a dissolution of the partnership firm.

Under the provisions of section 45(4) the profits and gains arising on the transfer of a capital asset of a partnership firm on the dissolution of the firm is liable for capital gains w.e.f. 1-4-1988.

Before the insertion of the above sub-section, there was section 47 which dealt with transactions not regarded as transfer. Under section 47(ii) any distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons was regarded as not 'transfer'. This sub-section is also omitted w.e.f. 1-4-1988 by the Finance Act, 1987. This would show that any distribution of capital

assets on the dissolution of a firm, body of individuals or other association of persons is regarded as 'transfer'. Subsequent to the omission of the above subsection by the Finance Act, 1987, w.e.f.

1-4-1988, section 45(4) is also inserted also w.e.f. 1-4-1988. From the above it is clear that w.e.f. 1-4-1988 distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons will amount to 'transfer' and, therefore, it is exigible for capital gains tax. Hence, we hold that the provisions of section 45(4) are applicable in this case and the Assessing Officer as well as the CIT(A) are justified in applying the above section and holding that capital gains tax is leviable in the hands of the firm M/s. Suvardhan.

8. The next point to be decided is whether there is any error in the computation of capital gains made by the Assessing Officer and confirmed by the CIT(A). During the survey of the premises it was noticed that there was a valuation report as on 10-4-1992 valued as per book. But there is a decision of the Hon'ble Supreme Court in the case of A.L.A. Firm (supra) according to which the proper method is to value the closing stock at cost. That will eliminate entries relating to the same stock from both sides of the account. To this rule, custom recognises only one exception and that is to value the stock at market value if that is lower. On no principle can one justify the valuation of the closing stock at a market value higher than cost as that will result in taxation of notional profits the assessee has not realised.

It is again by the Hon'ble Supreme Court, in the above case : "There can be no manner of doubt that, in taking accounts for purposes of dissolution, the firm and the partners, being commercial men, would value the assets only on the real basis and not at cost or at their other value appearing in the books. The real rights of the partners cannot be mutually adjusted on any other basis." From the above, it has to be held that the assets of the dissolved firm in question have to be valued at market value. But, in this case, the valuation report found during the search proceedings takes the cost at book value which is not correct as per the decision of the Hon'ble Supreme Court. The Assessing Officer, therefore, computed the short-term capital gain as follows :Market value of building 5,32,250Misc. items

20,000 Plant & machinery 15,35,600 ----- Others 1,76,830 3,57,308 -----
-----Deemed short-term capital gains 17,30,522 chargeable to tax under section
45(4) rounded off 17,30,520 The contention on behalf of the assessee is that the
market value as determined by the Assessing Officer without appreciating that the
market value of the assets has been inflated while computing the capital gains is
not justified. But no evidence has been brought to our notice in this regard.
Therefore, the contention on behalf of the assessee that the computation of capital
gains is excessive, arbitrary cannot be countenanced. Therefore, it is rejected. We
do not find any reason to interfere with the computation of the short term capital
gains by the authorities below.

9. The last ground is against levy of interest under sections 234A, 234B & 234C of
the Income-tax Act. Interest under the above sections is leviable as a part of the
assessment. The jurisdictional High Court of Karnataka has upheld the validity of
the above sections. Hence, we uphold the levy.

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