

Cit Vs. Ruby Trading Co. (P) Ltd.

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Court : Rajasthan

Decided On : Jul-09-2002

Reported in : [2002]124TAXMAN186(Raj)

Appeal No. : DB IT Reference No. 32 of 1987 9 July 2002

Appellant : Cit

Respondent : Ruby Trading Co. (P) Ltd.

Advocate for Pet/Ap. : J.K. Singhi and Anuroop Singhi, *for the Revenue* Anant Kasliwal, *for the Assessee*

Judgement :
ORDER

Y.R. Meena, J.

On an application filed under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the Tribunal has referred the following questions for our opinion:

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding in law that the assessee was entitled to the benefit of the provisions contained in section 54E of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the order of the Commissioner of Income Tax passed under section 263 and in holding that the order passed by the Income Tax Officer was not erroneous and prejudicial to the interests of the revenue ?'

2. The relevant facts of the case are that the assessee-company held 4945 shares of Colaba Land & Mills Co. Ltd. since 1954. The company Colaba Land & Mills Co. Ltd. went into liquidation and the assessee-company realised the face value of the shares in the assessment year 1978-79 and during the accounting year relevant to the assessment year under reference, the official Liquidator paid the assessee-company a sum of Rs. 1,98,000 representing the shares of the assessee-company on the reserves of that company. The company thereafter utilised the sum of Rs. 1,98,000 in purchasing 1750 units of Unit Trust of India at Rs. 11.55 per unit. The assessee claimed that there was no capital gains as the amount received had been invested as per the provisions contained in section 54E of the Act. The Income Tax Officer had invoked the provisions of section 46(2) of the Act and accepted the claim of the assessee.

3. The Commissioner (Appeals) thereafter issued a notice to the assessee under section 263 of the Act for reviewing the order of the assessing officer as the order of the assessing officer is erroneous and prejudicial to the interest of the revenue. After hearing the assessee, the Commissioner (Appeals) was of the view that the order of the Income Tax Officer is erroneous insofar as it is prejudicial to the interest of the revenue, therefore, the Commissioner (Appeals) directed the Income Tax Officer to include Rs. 1,98,000 in the income of the assessee to tax that amount as a capital gain and to charge the tax accordingly.

4. In appeal before the Tribunal, the Tribunal has allowed the appeal holding that when there was a capital gain tax on receipt of the amount and if the assessee has invested that amount in the specified assets, the assessee is entitled to the benefit provided under section 54E.

5. Heard the learned counsels for the parties.

6. Mr. Singhi, the learned counsel for the revenue, submits that there is a provision in the Act, i.e., section 46(1) which provides that the distribution of assets on liquidation of the company to its shareholders is not a transfer. Section 46(2) provides that if there is any gain out of the distribution of the assets or money by the company in liquidation, that gain shall be taxed under the head 'Capital gains'. The learned counsel placed reliance on the decision of the Apex Court in the case of *Vijay Kumar Budhia v. CIT* : [1993]204ITR355(SC) .

7. On the other hand, Mr. Kasliwal, the learned counsel for the assessee-company, submits that when the assessee has received the amount against the shares of the company on its liquidation and if there is any gain under section 46(2), that is taxable under the head 'Capital gains'. Once it is taxed as capital gains and if that amount is invested in the specified assets, then the assessee is entitled to the benefit of section 54E. The provisions of section 46(1) and (2) reads as under :

'Capital gain on distribution of assets by companies in liquidation.(1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholder on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head 'Capital gains', in respect of money so received or the market value of the other assets on the date of distribution as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.'

8. It is true that the provisions of sub-section (1) of section 46 provide that notwithstanding anything contained in section 45 of the Act if the company distributes assets or money to its shareholders on liquidation, that shall not be regarded as a transfer. Thus, sub-section (1) of section 46 has overriding effect over section 45. It may be transfer but in this case, on of distribution of the assets or money by the company on liquidation to its shareholders, it cannot be said to be

a transfer.

9. Sub-section (2) of section 46 provides that where the shareholders on liquidation of the company receives any money or other assets, he shall be chargeable to income-tax under the head 'Capital gains', therefore, that makes it clear that it is not treated as a transfer under sub-section (1) of section 46 but at the same time the intention of the Legislature is that if the assessee has gained anything out of the assets and money received from the company on liquidation, that can be taxed as a capital gain tax.

10. Mr. Kasliwal also brought to our notice a decision of the Gujarat High Court in the case of CIT v. Jaykrishna Harivallabhdas (1998) 231 ITR 108 wherein the provisions of section 46(1) and (2) are considered. The court has taken the decision that for the computation of capital gains, if the assessee receives money in positive balance, i.e., taxable under the head 'Capital gains', sub-section (2) of section 46 shows that if the assessee suffers loss, that loss be treated as a loss entitled to set off and carried forward. Though there is no reference regarding loss but that has no relevancy in our case, i.e., in the case at hand. We are only concerned with the issue that on receipt of amount on liquidation of company, if the assessee has any gain and thereafter he invests that gain in the specified assets whether the assessee is entitled for the benefit of section 54E, that has not been considered in the aforesaid decision of the Gujarat High Court referred by Mr. Kasliwal, the learned counsel for the assessee.

11. In the case of Vijay Kumar Budhia (supra), their Lordships of the Supreme Court have taken the view that sub-section (2) of section 46 provides that any income received by the assessee on liquidation, that was not on account of transfer of property even though that has been taxed by creation of fiction of law. The relevant observation reads as under :

'It is sub-section (2) which is particularly relevant in the present case. Even though the income received by the assessee in the liquidation proceedings was not on account of any transfer of property, yet Parliament has chosen to treat such receipt as capital gains, subject of course to certain specified deduction. May be, it is a case of fiction created by Parliament may be not. The validity of the provision

is not questioned nor is it in issue herein. The sub-section says that where a shareholder receives certain amounts or other assets from the company on its liquidation, he shall be charged to income-tax under the head 'Capital gains' in respect of the money so received or on the market value of the assets received as on the date of the distribution.....'

When the intention of the Legislature is that the distribution of the assets or money on liquidation of the company to its shareholders it shall not be treated as transfer and that sub-section (2) of section 46 provides that in spite of that, gain be taxed under the head 'Capital gains', that is the intention of the Legislature though by creation of fiction of law, we have to go by the provisions of law. For the purpose of benefit of section 54E, transfer is a condition precedent and when it is not treated as a transfer, the assessee is not entitled to benefit of section 54E, therefore, the Commissioner has rightly revised the order of the Income Tax Officer under section 263. The Tribunal has committed an error in treating the amount so received from the company as transfer under the existing provisions of the Act.

12. In the result, we answer both the questions referred to this court in the negative, i.e., in favour of the revenue and against the assessee.

13. Reference so made stands disposed of accordingly.

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