

Before Gokal Chand Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, JULLUNDUR,—Applicant.

versus

M/S BHARATI ENGG. CORPORATION, PHAGWARA,—Respondent.

Income Tax Reference No. 77 of 1982.

27th April, 1989.

Income Tax, Act, 1961—Ss. 2(47), 52(2), 256(1)—Transfer of immovable property of firm in favour of partners—Transfer entered in books of firm—No conveyance deed registered—Ownership over properties not transferred—No liability to pay Capital Gains Tax.

Held, that mere entries in the books of a partnership firm without conveyance of the properties by deed of registration cannot have the effect of transferring ownership over the properties from the firm to the partners. The firm was, therefore, not liable to pay any capital gains tax.

(Paras 4 and 5)

Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal Amritsar Bench, Amritsar, to the Hon'ble High Court of Punjab and Haryana for opinion of the following question of law arising out of the Tribunal's order dated 7th November, 1981 in R.A. No. 9 (ASR)/1982 in ITA No. 417(ASR)/1980 Assessment year 1976-77.

“Whether on the facts and in the circumstances of the case the ITAT was right in law in confirming the deletion of capital gain of Rs. 6,39,876 by CIT (A) by holding that there was no transfer of any capital asset within the meaning of section 2(47) of I.T. Act, 1961 ?”

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Applicant.

Balwant Singh Gupta, Sr. Advocate with Sanjay Bansal and K. K. Cuccria, Advocates, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns the transfer of immovable property by a firm to its partners. The controversy being whether such transfer can be effected by mere entries in the books of the firm?

Commissioner of Income Tax, Jullundur v. M/s Bharati Engg. Corporation, Phagwara (S. S. Sodhi, J.)

(2) The assessee-Messrs : Bharti Engineering Corporation owned three immovable properties described as a building near Paradise Cinema, Phagwara; a plot No. 32, Industrial Area, Phagwara and a plot near the Octroi Post, Grand Trunk Road, Phagwara. The assessee purported to make over these three Properties at their book value to three of its partners, namely, Sarvshri S. R. Uppal; S. P. Uppal and S. K. Uppal, respectively by debiting their personal account with the book value of the properties in question and making corresponding entries in the property account of the firm.

(3) According to the Income Tax Officer, the market value of the three properties in question was much more than their book value and the assessee-firm was consequently called upon to show why capital gains under Section 52(2) of the Income Tax Act, 1961 be not assessed. After considering the reply of the assessee, the Income Tax Officer held the assessee firm liable to both long term and short term capital gains.

(4) On appeal, the Commissioner of Income Tax deleted the additions as made by the Income Tax Officer on account of both long term and short term capital gains by holding that the entries in the books of the assessee firm did not have the effect of transferring the properties from the firm to its partners. The Tribunal agreed with this view and held that mere entries without conveyance of the properties by a deed of registration would not have the effect of transferring ownership over the properties from the firm to the partners. It is in this context that the following question has been referred for the opinion of this Court, namely :

“Whether, on the facts and in the circumstances of the case, the ITAT was right in law in confirming the deletion of capital gain of Rs. 6,39,876 by CIT (A) by holding that there was no transfer of any capital asset within the meaning of Sec. 2(47) of I.T. Act, 1961 ?”

(5) It is a well-settled proposition of law that mere entries in the books of a partnership firm cannot convert partnership property into individual property of its partners. The judicial precedent for this view is provided by the judgment of the High Court of Karnataka in *Jansons vs. Commissioner of Income Tax Karnataka*, (1), where, the Court further went on to hold that even

(1) (1985) 154 I.T.R. 432.

an agreement entered into by the partners treating the firm's property as individual property would not have such effect unless the agreement was followed by a deed of conveyance, known to law. A similar view has been taken in a string of authorities. Those cited in this behalf being; *Commissioner of Income Tax, Tamil Nadu-I vs. Dadha and Company* (2); *Ram Narain and Brothers vs. Commissioner of Income Tax* (3) and, *Abdul Kareemia and Bros. vs. Commissioner of Income Tax* (4).

(6) The question posed has thus clearly to be answered in the affirmative in favour of the assessee and against revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

P.C.G.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDUR,—*Applicant.*

versus

M/S NORTHERN INDIA MOTION PICTURES ASSOCIATION,
JULLUNDUR,—*Respondent.*

Income Tax Reference No. 69 of 1981

27th April, 1989.

Income Tax Act, 1961—S. 256(1)—Income under the head "others" consisting of admission fee etc. received from members—Members retaining control on disposal of surplus—Principle of mutuality—Whether satisfied—Such receipts—Whether liable to be taxed.

Held, that the receipts under the head 'others' were neither income liable to be taxed under the head 'business' nor under the head 'other sources'.

(Para 2)

[106 I.T.R. 542 (Gujarat) (Distinguished)]

Reference under Section 256(1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal (Amritsar Bench), Amritsar, to the Hon'ble High Court of Punjab and Haryana at Chandigarh, for

(2) (1983), 142 I.T.R. 792.

(3) (1969) 73, I.T.R. 423 .

(4) (1984) 145, I.T.R. 442.