

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF MARCH 2012

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

ITA.NO.3048 OF 2005

BETWEEN:

1. The Commissioner of
Income-Tax
C.R.Building,
Queens Road,
Bangalore.
2. The Deputy Commissioner
Of Income Tax,
Special Range-2,
C.R.Building,
Queens Road,
Bangalore.

...APPELLANTS

(By Sri G.Kamaladhar, Advocate)

AND:

Shri R.Nagaraja Rao
No.27, Bull Temple Road,



Bangalore.
Deceased by LR's

1. Smt. N.Jayamala
W/o R.Nagaraja Rao,
Aged about 59 years.
2. Sri Rajesh Jagdale
S/o Nagaraja Rao,
Aged about 36 years.
3. Sri Jayesh N.Jagdale
S/o Nagaraja Rao,
Aged about 34 years.
4. Smt.Ujwala N.Jagadale
D/o R.Nagaraja Rao,

All are residing at No.59/23
"Sumeru", 29th Cross, 7th Block,
Jayanagar, Bangalore - 560 082.

Amended as per
Court order
dated 9.8.2010

...RESPONDENTS

(By Sri A.Shankar and Sri M.Lava, Advocates)

This ITA filed under section 260-A of I.T.Act, 1961 arising out of order dated 26.04.2005 passed in ITA.No.432/Ban/1997 for the Assessment year 1993-94, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order passed by the ITAT, Bangalore in ITA.No.432/Ban/1997 dated 26.04.2005 and confirm the orders of the Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income Tax, Special Range-2, Bangalore.

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This ITA coming on for hearing this day, N.KUMAR J., delivered the following:-

JUDGMENT

The Revenue has preferred this appeal against the order passed by the Tribunal which held that the transactions and the family arrangement made between the assessee and the other family members cannot be treated otherwise than a family arrangement. Hence there is no transfer either of the moveable or immoveable as such. The assessee is not liable to pay any capital gains. There was a family arrangement by a deed dated 21-12-1992 between the children of late J.N. Radhakrishna and Saraswathi Bai. That each of the parties were holding apart from personal properties, the family properties and shares in different business concerns and each of the family business has been independently managed by one of the parties. Disputes arose between the parties. The dispute was referred to an arbitrator. The arbitrator suggested a settlement which the parties agreed. In

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terms of the settlement the assessee had to resign from Kaveri Breweries, a partnership firm and transfer his interest to Sri Neelakanta Rao for a consideration of Rs.35,000/- being the capital balance of the firm. Accordingly, the assessee transferred the shares. Sri Neelakanta Rao transferred the shares held by him in favour of the assessee. The assessee claimed there was no transfer which give rise to any capital gains. However, the assessing authority held that there was a transfer, there was a capital gain and therefore the assessee is liable to pay the tax. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax(appeals). The appellate Commissioner confirmed the order of the assessing authority. Aggrieved by these two orders the assessee preferred an appeal to the Tribunal. The Tribunal after considering the Judgment of the Apex Court in the case of RAM CHARAN DAS v.GIRIJA NANDINI DEVI reported in AIR 1966 SC 323 and also of the Gauhati High Court in the case of ZIAUDDIN AHMED v.

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COMMISSIONER OF GIFT TAX reported in 102 ITR 253 held that admittedly there are lot of disputes between the family members of the assessee who are none other than the relatives of one other and in that event, the family arrangement and settlement entered into between the parties on the suggestion made by the arbitrator cannot be termed as a transfer either in respect of moveable or immoveable properties or in respect of commercial properties. Therefore, the Tribunal held that there is no transfer and it was only a family arrangement. Therefore he was not liable to pay tax on capital gains. Accordingly ~~he~~ set aside the order passed by the lower authorities. Aggrieved by the said order the Revenue has preferred this appeal.

2. The substantial question of law which is framed in this appeal on 12-8-2006 reads as under:-

"1. *Whether, the Tribunal was correct in holding that the sale proceeds earned by the assessee out of sale of shares held in private*

limited companies cannot be treated as the income of the assessee and brought to capital gains tax.

2. *Whether, the Tribunal was correct in holding that the transfer of shares took place by virtue of family arrangement and there was no transfer as there was family disputes and such arrangement took place at the instance of the arbitrator.*

3. *Whether, the Tribunal was correct in holding that the finding recorded by the Assessing Officer that the sale of shares held by the assessee in his individual capacity over various private limited companies can be brought to capital gains tax which came to be upheld by the Appellate Commissioner.*

This Court had an occasion to consider the aforesaid questions in the case of THE COMMISSIONER OF GIFT TAX & ANOTHER vs.K.N.MADHUSUDHAN in Gift Tax Appeal Nos. 1 & 2/2008 disposed off on 6th September,

2010. In the aforesaid Judgment it was held that the word 'transfer' does not include partition or family settlement as defined under the Act. It is well settled that a partition is not a transfer. What is recorded in a family settlement is nothing but a partition. Every member has an anterior title to the property which is the subject matter of a transaction, that is, partition or a family arrangement. So there is adjustment of shares, crystallization of the respective rights in the family properties and therefore it cannot be construed as a transfer in the eye of law. When there is no transfer there is no capital gain and consequently no tax on capital gain is liability to be paid. The tribunal on a proper consideration of the entire material on record has categorically held that the transaction question is a family arrangement. There is no transfer, there is no capital gain and therefore there is no liability to pay capital gain tax. The order is in accordance with law. The substantial questions of law are answered in

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favour of the assessee and against the revenue. No merits in this appeal. Accordingly, this appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Rsk

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