

A THE COMMISSIONER OF INCOME TAX, AHMEDABAD

v.

EQUINOX SOLUTION PVT. LTD.

(Civil Appeal No. 4399 of 2007)

B APRIL 18, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

C *Income Tax Act, 1961 – ss. 50(2), 48(2) – Applicability of –*
D *Sale of entire running business with assets and liabilities in one go*
E *if amounts to slump sale of a “long term capital asset” – Respondent-*
F *assessee sold its entire running business in one go and claimed*
G *deduction u/s.48(2) treating such sale as slump sale in the nature of*
H *a long term capital gain – Assessing Officer rejected the exemption*
claimed holding that the case of the assessee was covered u/s. 50(2)
as it was in the nature of short term capital gain – Appeal by
respondent before CIT (Appeal), allowed holding that the
undertaking itself was a capital asset, owned by respondent for six
years, being in the nature of long term capital asset and the same
having been sold in one go as a running concern cannot be termed
as short term capital gain – Appeals by Revenue, dismissed by ITAT
and High Court – On appeal, held: The case of the respondent
does not fall within the four corners of s.50 (2) – Provisions of s.
50 (2) would apply to a case where the assessee transfers one or
more block of assets, which he was using in running of his business
– However, when the entire running business with all assets and
liabilities are sold in one go, as done by the respondent, it is a
slump sale of a “long-term capital asset” and not of “short term
capital asset” – It was, therefore, required to be taxed accordingly
– No fault found in the reasoning and the conclusion arrived at by
CIT (Appeal) which was rightly upheld by the Tribunal and High
Court.

G **Dismissing the appeal, the Court**

H **HELD:** 1. **The case of the respondent (assessee) does not fall within the four corners of Section 50 (2) of the Income Act. Section 50 (2) applies to a case where any block of assets are transferred by the assessee but where the entire running business with assets and liabilities is sold by the assessee in one**

go, such sale, cannot be considered as “short-term capital assets”. In other words, the provisions of Section 50 (2) of the Act would apply to a case where the assessee transfers one or more block of assets, which he was using in running of his business. Such is not the case here because in this case, the assessee sold the entire business as a running concern. [Para 11] [97-E-F]

Commissioner of Income Tax, Gujarat v. Artex Manufacturing Co. 1997 (6) SCC 437 CIT : [1997] 1 Suppl. SCR 608 – relied on.

Premier Automobiles Ltd. v. Income Tax Officer & Anr. 264 ITR 193 (Bombay) – approved.

Case Law Reference

[1997] 1 Suppl. SCR 608 relied on Para 13

264 ITR 193 (Bombay) approved Para 14

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4399 of 2007.

From the Judgment and Order dated 29.07.2003 of the High Court of Gujarat at Ahmedabad in Income Tax Appeal No. 59 of 2003.

K. Radhakrishna, Sr. Adv., Rupesh Kumar, Ms. Shweta Garg (for Mrs. Anil Katiyar), Advs. for the Appellant.

Inder Paul Bansal, Vivek Bansal, Haresh Raichura, Ms. Saroj Raichura, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the Revenue (Income Tax Department) against the order dated 29.07.2003 passed by the High Court of Gujarat at Ahmedabad in I.T.A. No. 59 of 2003 whereby the High Court dismissed the Revenue’s appeal on the ground that the appeal does not involve any substantial question of law under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. We herein set out the facts, in brief, to appreciate the issues involved in this appeal.

3. The respondent-assessee was engaged in the business of manufacturing sheet metal components out of CRPA & OP sheds at

A Ahmadabad. The respondent decided to sell their entire running business in one go. With this aim in view, the respondent sold their entire running business in one go with all its assets and liabilities on 31.12.1990 to a Company called "Amitrex Appliances Ltd" for Rs.58,53,682/-.

B 4. The respondent filed their income tax return for the Assessment Year 1991-1992. In the return, the respondent claimed deduction under Section 48 (2) of the Act as it stood then by treating the sale to be in the nature of "slump sale" of the going concern being in the nature of long term capital gain in the hands of the assessee.

C 5. The Assessing Officer by his order dated 04.03.1994 did not accept the contention of the assessee in claiming deduction. According to the Assessing Officer, the case of the assessee was covered under Section 50 (2) of the Act because it was in the nature of short term capital gain as specified in Section 50 (2) of the Act and hence did not fall under Section 48 (2) of the Act as claimed by the assessee. The Assessing Officer accordingly reworked the claim of the deduction treating the same to be falling under Section 50 (2) of the Act and framed the assessment order.

E 6. The assessee, felt aggrieved, filed appeal before the CIT (appeals). By order dated 06.10.1995, the Commissioner of Appeals allowed the assessee's appeal in so far as it related to the issue of deduction. He held that when it is an undisputed fact that the assessee has sold their entire running business in one go with its assets and liabilities at a slump price and, therefore, the provisions of Section 50 (2) of the Act could not be applied to such sale. He held that it was not a case of sale of any individual or one block asset which may attract the provisions of Section 50 (2) of the Act. He then examined the case of the assessee in the context of definition of "long term capital gain" and "short term capital asset" and held that since the undertaking itself is a capital asset owned by the assessee nearly for six years and being in the nature of long term capital asset and the same having been sold in one go as a running concern, it cannot be termed a "short terms capital gain" so as to attract the provisions of Section 50 (2) of the Act as was held by the Assessing Officer. The CIT (appeals) accordingly allowed the assessee to claim the deduction as was claimed by them before the Assessing Officer.

H 7. The Revenue, felt aggrieved of the order of the CIT (appeal), filed appeal before the Income Tax Appellate Tribunal. By order dated

27.06.2002, the Tribunal concurred with the reasoning and the conclusion arrived at by the Commissioner of Appeal and accordingly dismissed the Revenue's appeal.

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8. The Revenue, felt aggrieved of the order of the Tribunal, carried the matter to the High Court in further appeal under Section 260-A of the Act. By impugned order, the High Court dismissed the appeal holding that the appeal does not involve any substantial question of law within the meaning of Section 260-A of the Act. It is against this order the Revenue felt aggrieved and carried the matter to this Court in appeal by way of special leave.

B

9. Heard Mr. K. Radhakrishnan, learned senior counsel for the appellant and Mr. Inder Paul Bansal, learned counsel for the respondent-assessee.

C

10. Having heard the learned Counsel for the parties and on perusal of the record of the case, no fault can be found in the reasoning and the conclusion arrived at by the CIT (appeal) in his order which, in our view, was rightly upheld by the Tribunal and then by the High Court calling no interference by this Court in this appeal.

D

11. In our considered opinion, the case of the respondent (assessee) does not fall within the four corners of Section 50 (2) of the Act. Section 50 (2) applies to a case where any block of assets are transferred by the assessee but where the entire running business with assets and liabilities is sold by the assessee in one go, such sale, in our view, cannot be considered as "*short-term capital assets*". In other words, the provisions of Section 50 (2) of the Act would apply to a case where the assessee transfers one or more block of assets, which he was using in running of his business. Such is not the case here because in this case, the assessee sold the entire business as a running concern.

E

12. As rightly noticed by the CIT (appeal) that the entire running business with all assets and liabilities having been sold in one go by the respondent-assessee, it was a slump sale of a "*long-term capital asset*". It was, therefore, required to be taxed accordingly.

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13. Our view finds support with the law laid down by this Court in Commissioner of Income Tax, Gujarat vs. Artex Manufacturing Co. [1997(6) SCC 437 CIT].

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A 14. In Premier Automobiles Ltd. vs. Income Tax Officer &
Anr., 264 ITR 193 (Bombay) also, the Division Bench of the Bombay
High Court examined this question in detail on somewhat similar facts
and has taken the same view. The Learned Judge S.H Kapadia - (as
His Lordship then was as Judge of the Bombay High Court and later
B became CJI) speaking for the Bench aptly explained the legal position to
which we concur as it correctly summarized the legal position applicable
to such facts.

 15. Learned Counsel for the appellant (Revenue) was not able to
cite any decision taking a contrary view nor was he able to point out any
error in the decisions cited at the Bar by the assessee's counsel referred
C supra.

 16. In the light of foregoing discussion, we find no merit in the
appeal which fails and is accordingly dismissed.

Divya Pandey

Appeal dismissed.