COMMISSIONER OF INCOME TAX, BOMBAY

v.

RASIKLAL MANEKLAL (H.U.F.) & ORS.

MARCH 29, 1989

[R.S. PATHAK, CJ AND RANGANATH MISRA, J.]

Indian Income Tax Act, 1922—Sub-s. (1) of s. 12B—Amalgamation of two companies resulting in dissolution of one of them and allotment of shares of the surviving company to the shareholders of the dissolved company—Whether amounts to 'exchange' or 'relinquishment' within the meaning of the sub-section.

Words and Phrases—Meanings of 'exchange' and 'relinquishment'.

Sub-s. (1) of s. 12B of the Indian Income Tax Act, 1922 provides that tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset.

The respondent-assessee who owned 90 shares in the Shorrock Co. which stood dissolved under a scheme of amalgamation with another company known as New Shorrock Co., which was sanctioned by the High Court, was allotted 45 shares of the New Shorrock Co. in terms of the provisions of the said scheme. During the assessment proceedings for the assessment year 1961-62, the Income Tax Officer omitted to consider the applicability of s. 12B to the case of the assessee. Later on, the Commissioner issued a notice under s. 33B to the assessee stating that the receipt of 45 shares of the New Shorrock Co. "in exchange" of his original holding of 90 shares in the Shorrock Co. had resulted in an assessable profit, and passed an order directing the Income Tax Officer to revise the assessment and to include an amount of Rs.49,350 representing the capital gain resulting from the transaction. On appeal by the assessee the Appellate Tribunal held that the transaction represented neither an exchange nor a relinquishment and, therefore, s. 12B of the Act was not attracted. However, at the instance of the Revenue the Tribunal referred the question to the High Court which answered it in favour of the assessee.

Dismissing the appeals,

A **HELD: The sole question is whether the receipt of the 45 shares of the New Shorrock Co. upon amalgamation by reason of the share holding of 90 shares of the Shorrock Co. can be described as an "exchange" or a "relinquishment" within the meaning of s. 12B. It seems plain to us that no exchange is involved in the transaction. An exchange involves the transfer of property by one person to another and**
B **reciprocally the transfer of property by that other to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. In the present case, the assessee cannot be said to have transferred any property to any one. When he was allotted the shares of the New Shorrock Co. he was entitled to such allotment because of his holding the 90 shares of Shorrock Co. The holding of the**
C **90 shares in the Shorrock Co. was merely a qualifying condition entitling the assessee to the allotment of the 45 shares of the New Shorrock Co. The dissolution of the Shorrock Co. deprived the holding of the 90 shares of that company of all value. [183B-E]**

On the question whether there was any relinquishment, the
D **decision must again be against the Revenue. A relinquishment takes place when the owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the relinquishment. Upon amalgamation, the shares of the Shorrock Co. lost all value as that company stood dissolved. [183E-F]**

E CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1905-06 (NT) of 1974 and 3414 of 1984.

From the Judgment and Order dated 24.7.73 and 7.9.81 of the Bombay High Court in I.T.R. No. 19 of 1967, 66 of 1964 and 27 of 1972 respectively.
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B. Datta, Additional Solicitor General, M.B. Rao and Ms. A. Subhashini for the Appellant.

Soli J. Sorabji, Harish Salve, Mrs. A.K. Verma and Jeel Peres for the Respondents.
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The Judgment of the Court was delivered by

PATHAK, CJ. The assessee is a Hindu Undivided Family deriving income from interest on securities, dividends, property and dealing in shares. In 1941 the assessee purchased a share of the Shor-
H rock Spinning and Manufacturing Co. Ltd., hereinafter referred to as

"the Shorrock Co.", of the face value of Rs.1,000 for Rs.3,307. Later this share was split into 10 shares of Rs.100 each, and from time to time a total of 80 shares of the face value of Rs.100 each was issued to the assessee by way of bonus shares. In consequence, on 31 December, 1959 the assessee owned 90 shares in the Shorrock Co. of the face value of Rs.100 each.

There is another company called the New Shorrock Spinning and Manufacturing Co. Ltd. to which reference may be made as "the New Shorrock Co.". It was decided to amalgamate the Shorrock Co. with the New Shorrock Co., and upon petitions filed under s. 391 and s. 394 of the Companies Act, 1956 the Gujarat High Court made an order dated 23 September, 1960 directing meetings of the share holders of both the companies. The meetings were held on 27 October, 1960 and the scheme of amalgamation was approved. On 25 November, 1960 the High Court sanctioned the scheme of amalgamation and declared that the scheme would be binding on members of both the Companies.

Under the scheme of amalgamation, the undertaking and all the property rights and powers as well as all liabilities and duties of the Shorrock Co. were to stand transferred and vest with effect from 1 January, 1960 in the New Shorrock Co. The scheme of amalgamation provided further for an increase in the share capital of the New Shorrock Co. and it permitted the creation of 14,625 new ordinary shares of the face value of Rs.125 each of the transferee company. The newly created shares were to rank *pari passu* with the existing shares of the transferee company in all respects. Under the scheme the New Shorrock Co., as the transferee company, was directed to allot to members of the Shorrock Co., the transferor company, one share in the transferee company for every two shares of the transferor company held by them. The order of the Court directed that the Shorrock Co. should file a certified copy of the order with the Registrar of Companies within 14 days for registration, and on such certified copy being delivered the transferor company would stand dissolved and the Registrar of Companies was to place all documents relating to the transferor company on the file relating to the transferee company and the folios relating to the two companies were to be consolidated accordingly.

During the assessment proceedings for the assessment year 1961-62, the previous year being the financial year ended 31 March, 1961, the Income Tax Officer, although apprised of the fact of the scheme of amalgamation and of the acquisition by the assessee of 45 shares of the

New Shorrock Co. omitted to consider the applicability of s. 12B of the Indian Income Tax Act, 1922. On 21 January, 1964 the Commissioner of Income-tax issued a notice under s. 33B of the Act to the assessee stating that the receipt of 45 shares of the New Shorrock Co. "in exchange" of his original holding of 90 shares in the Shorrock Co. in December 1960 had resulted in an assessable profit, and this aspect had been overlooked by the Income Tax Officer when making the regular assessment, and, therefore, he proposed a revision of the assessment. After hearing the assessee, the Commissioner of Income Tax passed an order dated 29 January, 1964 directing the Income Tax Officer to revise the assessment and to include an amount of Rs.49,350 representing the capital gain resulting from the transaction of the acquisition of 45 shares of New Shorrock Co. in place of the 90 shares held in Shorrock Co. On appeal by the assessee before the Income Tax Appellate Tribunal, the Appellate Tribunal held that the transaction represented neither an exchange nor a relinquishment and, therefore, s. 12B of the Act was not attracted.

At the instance of the Revenue the Appellate Tribunal referred the following questions to the High Court for its opinion:

> "1. Whether on the facts and in the circumstances of the case, the sum of Rs.49,350 could be assessed in the hands of the assessee as capital gains as having accrued to the assessee by exchange or relinquishment as provided for under section 12B of the Act?
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> 2. If the answer to the above question is in the affirmative, whether the said sum of Rs.49,350 was assessable in the year 1961-62?"

Before the High Court the Revenue did not contend that the transaction constituted a sale or a transfer, and the parties confined themselves to the point whether the transaction represented an exchange or a relinquishment for the purposes of s. 12B. The High Court took the view that no exchange can be said to have taken place on the allotment of the 45 shares of the New Shorrock Co. under the scheme of amalgamation. Nor, in the opinion of the High Court, did it constitute a relinquishment. In the result, the High Court answered both questions in favour of the assessee and against the Revenue.

The relevant portion of s. 12B of the Act provides:

S. 12B(1) Capital gains. The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected after the 31st day of March, 1956, and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange, relinquishment or transfer took place.

The sole question is whether the receipt of the 45 shares of the New Shorrock Co. upon amalgamation by reason of the share holding of 90 shares of the Shorrock Co. can be described as an "exchange" or a "relinquishment" within the meaning of s. 12B of the Act. It seems plain to us that no exchange is involved in the transaction. An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. In the present case, the assessee cannot be said to have transferred any property to any one. When he was allotted the shares of the New Shorrock Co. he was entitled to such allotment because of his holding the 90 shares of Shorrock Co. The holding of the 90 shares in the Shorrock Co. was merely a qualifying condition entitling the assessee to the allotment of the 45 shares of the New Shorrock Co. The dissolution of the Shorrock Co. deprived the holding of the 90 shares of that company of all value.

On the question whether there was any relinquishment, the decision must again be against the Revenue. A relinquishment takes place when the owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the relinquishment. Upon amalgamation, the shares of the Shorrock Co., as has been mentioned earlier, lost all value as that company stood dissolved. There is no relinquishment.

The connected cases raise similar questions, and are dealt with accordingly.

In the result, we agree with the view taken by the High Court, and dismiss these appeals with costs.

H.L.C. Appeals dismissed.