

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 19.04.2023
DELIVERED ON: 02.05.2023

CORAM:

THE HON'BLE MR. ACTING CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT/144/2021

(IA NO: GA/02/2021)

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

VERSUS

M/S. SALAPURIA SOFT ZONE

Appearance:-

Mr. Om Narayan Rai, Senior Advocate.

Mr. Prithu Dudheria, Advocate.

.....For the Appellant.

Mr. J.P. Khaitan, Senior Advocate.

Mr. Pratyush Jhunhunwala, Advocate.

Mr. Mrigank Agarwal, Advocate.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, ACJ.)

1. This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the common order passed by the Income Tax Appellate Tribunal, A Bench, Kolkata (Tribunal) dated 23.10.2019 in ITA No. 1582 and 1583/Kol/2016 and ITA No. 1909 and 1910/Kol/2016 for the AY 2008-09 and 2009-10. The revenue has raised the following substantial questions of law for consideration:

- (i) *Whether on the facts and circumstances and in law, the Income Tax Appellate Tribunal was erred in holding that there was change of opinion involved in the reopening the case of the assessee overlooking Explanation 1 of Section 147 of the Income Tax Appellate Tribunal, 1961 which postulates that production before the Assessing of accounts books or other evidence will not necessarily amount to disclosure within the meaning of the proviso?*
- (ii) *Whether on the facts and circumstances and in law, the Income Tax Appellate Tribunal was erred in holding that the conditions of Section 47(xiii) of the Income Tax Appellate Tribunal, 1961 had been complied with by the assessee although the assessee had converted the stock-in-trade into capital asset during the Financial Year 2007-08 revaluing it at market value ?*
- (iii) *Whether on the facts and circumstances and in law, the Income Tax Appellate Tribunal was wrongly held that the case pertaining to the Assessment Year 2009-10 the reason recorded by the Assessing Officer was for subjective satisfaction and not for objective satisfaction and that the reason recorded was not independent?*
- (iv) *Whether on the facts and circumstances and in law, the Income Tax Appellate Tribunal was failed to appreciate that plaint questioning*

about the taxability of the transaction involved in this case during the assessment proceedings does not necessarily mean that the Assessing Officer had examined the turn of events and the whole mount so appreciated should be treated as capital gains out of the transactions which should be treated as transfer?

2. We have heard Mr. Om Narayan Rai, learned Senior Standing Counsel along with Mr. Prithu Dudheria, learned Standing Counsel for the appellant and Mr. J.P. Khaitan, learned Senior Advocate assisted by Mr. Pratyush Jhunjhunwala and Mr. Mrigank Agarwal, learned Advocates for the respondent assessee.
3. The assessee is a partnership firm consisting of four partners namely, (i) M/s. Orchid Griha Nirman Pvt. Ltd., (ii) M/s. Blue Heaven Griha Nirman Pvt. Ltd., (iii) M/s. Command Constructions Pvt. Ltd. And (iv) M/s. Wellgrowth Griha Nirman Pvt. Ltd. On 30th March, 2005, the second and the third partner companies, namely, Blue Heaven and Command Constructions jointly purchased a landed property pursuant to a partition deed dated 19th January, 2006. The three companies, namely, Orchid, Blue Heaven and Command Constructions along with the fourth company namely, Well Grown formed the assessee firm with the deemed date of formation as 1st April, 2009. The Partnership Deed mentioned the profit sharing ration of the assessee firm as 10%, 10%, 10% and 17% respectively,. The nature of business to be carried on by the partnership firm was the business of real estate, developing the lands purchased by the first three partners and land was taken as stock-in-trade by the assessee firm in its books of accounts. As per the partnership deed, it was agreed that

the first and third partners jointly transfer entirely their right, title and interest in the entire land that they had jointly purchased and cost of such land would be treated as capital contribution by such partners. The entire fund required for carrying on the business of real estate was to be made available by the fourth partner. In the balance-sheets of the respondent assessee for the years ending 31.03.2006 and 31.03.2007 the cost of land was shown as stock-in-trade. Till 30th March, 2008 land and building which were held by the assessee firm was shown as “inventory” and were part of profit and loss account. On 31.03.2008, the said land and building was revalued and converted to fixed asset from “inventory” in the return filed on 30.09.2008. According to the Department, the revaluation exercise resulted in enhancing the value of the assets which were converted from Stock-in-trade amounting to Rs. 370,33,61,874 and parallelly the partners of the assessee firm had withdrawn substantial amount from its capital. The three partners namely, Blue Heaven, Orchid Griha Nirma and Command Constructions had withdrawn Rs. 8 crores each from its capital of Rs. 8.16 crores, Rs. 8.15 crores and Rs. 8.15 crores respectively and their capital balance as on 31st March, 2008 was Rs. 15.89 lakhs, Rs. 15 lakhs and Rs. 15 lakhs respectively. The fourth partner M/s. Well Growth had withdrawn Rs. 158.19 crores from its capital account and the balance as on 31.03.2008 was Rs. 98.53 lakhs. The enhanced value after revaluation were entered in a separate account created as partners’ current account where amount was credited in the name of the partners. The balance as on 31st March, 2008 of the partners in this account was shown as Rs. 38.10 crores in respect of Blue Heaven Griha Nirman, Rs. 37.87 crores in respect of Orchid Griha

Nirman and Command Constructions and Rs. 267.70 crores in respect of Wellgrowth Griha Nirman. This according to the department that on the enhanced value of the asset at the instance of the partners, was without paying any tax on such transaction. With effect from 29th September, 2008, the assessee firm was converted into a Limited Company and the partners' current account was converted into loan and shown as liability in the books of the company. According to the department on account of such conversion into loan the partners could and would withdraw these amounts as and when required and thus as against the exemption clause provided under Section 47(xiii) of the Act and consequently, the amount so appreciated on revaluation should have to be treated as capital gains in the hands of the assessee firm. It is the further case for the revenue that since, this aspect was not examined by the Assessing Officer in his scrutiny assessment made under Section 143(3) on 31.12.2010 and under Section 144 on 30.12.2011 for the AY 2008-09 and 2009-10 respectively, resulted in reopening of the assessments. The contention of the assessee that revaluation is a notional profit was rejected and it was held that the capital gains arising out of revaluation of land and building is taxable in the hands of the assessee and accordingly, the Assessing Officer passed reassessment orders under Section 147 read with Section 143(3) of the Act on 31st March, 2014 for the AY 2009-19. Aggrieved by such reassessment orders, the assessee preferred two appeals before the Commissioner of Income Tax, 12 Bench, Kolkata (CIT). The appeals were allowed in favour of the assessee deleting the additions made by the Assessing Officer. However, the challenge to the reopening of the assessment was rejected. Being aggrieved by the orders

passed by the CIT(A) dated 15.06.2016 and 20.06.2016 the assessee as well as the revenue preferred appeals before the Tribunal. The Tribunal by the impugned order allowed the assessee's appeal and dismissed the revenue's appeal and the correctness of which is questioned in this appeal suggesting the aforementioned substantial questions of law.

4. The first ground of challenge made by the revenue is by contending that the learned Tribunal erred in holding that the reassessment was a change of opinion without noting the facts that the Assessing Officer never raised any direct question regarding why it should not be held that the conversion of land and building by the assessee from stock-in-trade to capital asset followed by revaluation of land and building should not be taken as an accounting technique adopted to evade tax liability. Further, it is contended that from the reasons recorded by the Assessing Officer it was clear that there was genuine reason to believe that income tax had escaped assessment in the case of assessee. The chain of events that led to this reason to believe was spread over two Financial Years namely, FY 2007-08 and 2008-09 and, therefore, the Assessing Officer had to reopen the case of both the assessment years in order to prevent any possibility of leakage of revenue. Further, it is contended that the Tribunal erred in holding that just because in the reason for reopening, it was mentioned that the reopening is a subject to outcome of the proceedings initiated in the immediate previous year, it cannot be stated that the reason was not independent and not objective. Further, it was contended if the assessee had transferred the land and building as stock-in-trade they would have made a profit of Rs. 370.33 crores on which the assessee was liable to pay tax and in order to

circumvent this tax liability, the assessee converted stock-in-trade into capital asset during the Financial Year, FY-2007-08 and revalued it at the market rate and in the subsequent year the land and building so capitalized was transferred to the company upon conversion of the partnership firm giving credit to erstwhile partners in the form of loan advanced to them by the assessee company. It is further submitted that the nature of transaction is a clear violation of provision of Section 47(13) since, as per the provision the partners of the assessee firm were not entitled to receive any consideration or benefit directly or indirectly in any form or manner other than by way of allotment of shares for the company. However, the erstwhile partners were made loan creditors of the company formed upon conversion entitling them to withdraw the amount of revaluation profit from the company at their own will. The Assessing Officer having failed to form any opinion on the treatment of transaction as to whether to be considered as transfer under Section 47(xiii) of the Act and it is not a case of change of opinion as held by the Tribunal. On the above ground, the revenue seeks to set aside the orders passed by the Tribunal.

5. On behalf of the respondent assessee, it is contended that the revenue had not viewed the facts of the case in a proper perspective as the revaluation of the property cannot be viewed in isolation without reference to the circumstances which necessitated such revaluation. It is submitted that for the purpose of raising funds, the market value of the land and building was taken into account which had resulted multifold and consequently, the land and building had to be revalued and for which purpose the assets had to be transferred from stock-in-trade to fixed assets.

The revaluation amount was credited to the partners' current accounts from which it is clear that no income arose either to the firm or to its partners. The loan funds came from the partners' obligation by way of joint and several liability for repayment and capital gains under Section 45 of the Act can arise only upon transfer of a capital asset. It is not in dispute that the land and building were not sold by the firm or thereafter by the company which succeeded it. Thus, the revenue is seeking to tax a notional figure which is not an income at all. With regard to the applicability of Section 45 (4) of the Act it is submitted that the primary requirement is that there must be distribution of capital assets on the dissolution of a firm or otherwise and such distribution must be by transfer of capital assets giving rise to profits or gains. The first condition to be fulfilled is transfer by way of distribution of capital assets which is not satisfied in the case of the assessee and there was no distribution or transfer of any capital asset to anyone and what was done was only the conversion of the firm into the company in the Financial Year 2008-09 resulting in the assets and the liabilities of the firm getting transmitted to the company. Further, it is submitted that in the previous year, relevant to the Assessment Year 2008-09, there was no reconstitution of the firm or transfer or distribution of any capital asset and in the Financial Year 2008-09 three more partners were taken into the firm but there was no distribution of any capital asset upon such reconstitution and thus, it is submitted that there is no case for taxation of the revaluation amount in the Assessment Year 2008-09. With regard to the Assessment Year 2009-10, it is submitted that upon the firm being converted as a company, it was a statutory vesting of the property in the company and

there was no transfer of the capital asset as contemplated under Section 45(1) of the Act. No capital gain could be computed and no liability to pay any capital gain tax arose under Section 45(1) as no consideration accrued to the firm or received by it and therefore, the computation machinery has to necessarily fail. Further, it is not in dispute that the partners of the firm did not receive any consideration or benefit, directly or indirectly in any form or manner, other than by way of allotment of shares in the said company. It is to be taken into consideration that the credit to the partners' current accounts in the books of the firm in the preceding year was as a result of revaluation of the property which became necessary due to the borrowings from the bank from which the partners were jointly and separately liable. The taking over of the liabilities of the firm did not result in any income in the hands of or transfer of any assets by the firm within the meaning of Section 45 of the Act and question of any taxation in its hands does not arise. Reliance was placed on the decision of the High Court of Bombay in the case of **CIT Versus Texspin Engg. & Mfg. Works**¹ which was followed by the High Court of Madras in **Principle Commissioner of Income Tax Versus Ram Krishnan Kulwant Rai Holdings P. Ltd.**²

6. The decision of the High Court of Kerala in the case of **K.T.C. Automobiles Versus Deputy Commissioner of Income Tax**³ was referred to by the revenue which was distinguished by submitting that the facts in **K.T.C. Automobiles** was quite different and cannot be applied to the

¹ (2003) 263 ITR 345 (Bom)

² (2019) 416 ITR 123 (Mad)

³ 2019 SCC Online Ker 1983

assessee's case. On the above grounds, the learned senior counsel appearing for the assessee sought to sustain the order passed by the learned tribunal.

7. The case of the revenue is that the amount of revaluation of the land and building which was credited to the current accounts of the partners which was treated as loans to new companies amounted to accrual of consideration or benefit to the partners which was a transfer and therefore the firm is liable to pay tax on long term capital gain and short term capital gain. Further the partners have withdrawn the amount of revaluation reserve without paying the taxes on the revalued amount. On facts it has been established that revaluation of the fixed assets did not give rise to any profit to the partnership firm and there is no accrual of benefits in the hands of the partners and if that be so can there be any tax liability in the hands of the firm as well as in the hands of the partners. The learned tribunal after noting the accounting treatment followed by the assessee on facts found that no profit allotment on account of revaluation has accrued or arisen to the assessee firm and the revaluation of fixed asset did not give any profit to the firm and the revaluation was done so that the value of the fixed assets in the balance sheet would match the market price and the object behind such revaluation is to avail loans from banks and financial institutions by showing market price of the fixed assets in the balance sheet. Thus, in our view, the learned tribunal rightly rejected the contention raised by the revenue and also rightly noted the decision of the Hon'ble Supreme Court in ***Sanjeev Woolen Mills Versus Commissioner of Income Tax*** ⁴ wherein it was held that valuation of the assessee at market value, which

⁴ (2005) 279 ITR 434 (SC)

was higher than the cost, resulted in the imaginary or notional potential profit out of itself and not any real profit or income which can be taxed.

8. The next aspect which the tribunal dealt with was with regard to the applicability of Section 45(4) of the Act. It was noted that the said provision would apply when there is a distribution of assets to the partners so that its application can be justified and it can apply only when there is a transfer and secondly only when there is a distribution of assets to the partners. Further the tribunal noted that Section 47(xiii) is also complied with if it is held that there is a transfer of capital asset to a company, the clauses of Section 47(xiii) are fulfilled and thus even if it is held that there is transfer of capital asset by the firm to a company as a result of succession, the same is not charitable, as the condition prescribed therein are complied with. Thus, the tribunal concluded that looking at either angle, the capital gain is not eligible to tax. Similar was the finding for the assessment year 2009-2010 and the tribunal noted that mere revaluation amount being credited to the partners current account upon conversion to company, the partners did not get any extra right to withdraw any sum out of the said revalued amount. Furthermore, the tribunal rightly noted that for the assessment year 2009-2010, the revaluation had taken place in the preceding year and the amount had already been credited in the preceding year and only the conversion has taken place in the assessment year 2009-2010. The following facts noted by the tribunal would be relevant. The assets were revalued in the financial year 2007-2008 relevant to the assessment year 2008-2009 and the corresponding amount was credited to partners current account in the assessment year 2008-2009 itself and as such the partners were entitled to

withdraw any sum out of such current account from the assessment year 2008-2009 etc. Taking note of this fact and also the relevant clauses in the partnership deed, the tribunal rejected the conclusion of the assessing officer that upon conversion of such partnership firm to company under Part IX of the Companies Act, the character of the current account had changed. The tribunal placed reliance on the decision in the case of **Ram Krishnan Kulwant Rai Holdings Private Limited** and took note of the facts of the assessee's case and held that there is no distribution of assets but only taking over of the firm by company and as such there is no transfer of capital assets as contemplated in Section 45(1) or Section 45(4) of the Act. Further the mere revaluation amount being credited to the partner's current account and upon conversion of the firm as a company, the partners did not get any extra right to withdraw any sum out of the said revalued amount and accordingly rejected the revenue's appeal.

9. With regard to the correctness of the reopening, the tribunal had first noted the reasons for reopening. On examining the facts, the tribunal found that in the assessment order it is seen that the assessing officer was fully aware of the fact that with effect from September 29, 2008, the firm was converted into a company and the firm ceased to exist and consequently, the notice under Section 148 and the reassessment made pursuant thereto are invalid. Further the tribunal noted from the reasons recorded by the assessing officer and the impugned order of assessment that the reassessment proceedings were initiated to tax the revaluation amount and this would be a clear case of change of opinion on the part of the assessing officer. This conclusion was arrived at by the tribunal after noting that the

assessee had submitted the balance sheet and profit and loss account as on March 31, 2008 which contain information about the conversion of the inventory of land, building and amenities in the fixed assets as on March 30, 2008 and revaluation thereof on March 31, 2008 with consequent credit to the partners current account in their profit and loss sharing ratio which was duly stated. The extension of revaluation was indicated in Schedule IV being fixed assets schedule, in the books of accounts for the year ended March 31, 2008. The balance sheet as on March 31, 2008 read with the schedules gave a breakup of capital and current accounts of the partners and all these information was available before the assessing officer. The copy of the valuation report on the basis of which revaluation was made was also submitted to the assessing officer during the original assessment. During the course of original assessment the assessing officer by letter dated January 30, 2010 requisitioned various details in respect of partners capital and current account transactions and the assessee had furnished all the details by their letter dated November 16, 2010 and copies of the partners capital and current accounts together with their audited accounts as also the details of fixed assets were furnished by the assessee during the original assessment proceeding. Furthermore in the original assessment proceedings, the assessing officer had raised a specific question as to whether the revaluation amount can be assessed to tax and such query was duly replied by the assessee by letter dated December 27, 2018, Thus, the tribunal after taking into consideration this factual position held that the assessee has fully and truly disclosed in the course of the original assessment proceedings all relevant material facts and the assessing officer

accepted the contention that the revaluation amount was not income or taxable and no addition was made in the original assessment order dated December 31, 2010. The tribunal further noted that the reasons recorded for reopening of the assessment referred to the same facts which were on record and duly considered by the assessing officer at the time of the original assessment and no new facts and information have been adverted to in the reasons recorded by the assessing officer. Therefore, the tribunal came to the conclusion that the assessing officer has sought to review the assessment made during the original assessment and arrived at a different opinion upon reassessment/reconsideration of the very same material which was considered during the original assessment proceedings.

10. Nextly, the tribunal examined the reasons recorded by the assessing officer for the assessment year 2009-2010. Interestingly, in the penultimate paragraph of the reasons for reopening, it has been stated that subject to “the merits of the addition in A.Y. 2008-2009 and appellate order thereon the revaluation profit on conversion from capital account of partners to loan is transfer of assets and i.e. to be taxed as income in the hands of the firm”. The tribunal on noting the said reasons, rightly held that the reasons recorded are not independent and the assessing officer had failed to note that each assessment year, is a separate unit and reasons are to be recorded separately year wise and it is evident from the reasons recorded that it depends upon outcome of the assessment year 2008-2009 to tax the income escaped for the assessment year 2009-2010 and therefore the assessing officer is merely suspecting that income for the assessment year 2009-2010 may or may not escape assessment. This being guess work was

held to be unsustainable. In support of its conclusion, the tribunal relied on the decision of the Hon'ble Supreme Court in ***Income Tax Officer Versus Lakhmani Mewal Das*** ⁵. In the light of the said factual position, the tribunal came to the conclusion that the reassessment proceedings for the assessment year 2009-2010 should be quashed.

11. At this juncture, it would be beneficial to refer to the decision of the Hon'ble Supreme Court in ***Income Tax Officer, Ward No. 16(2) Versus Techspan India Private Limited and Another*** ⁶ wherein the Hon'ble Supreme Court held as follows:-

18. Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings.

⁵ (1976) 103 ITR 437

⁶ (2018) 6 SCC 685

12. In terms of the above decision of the Hon'ble Supreme Court, the court before interfering with the reopening of the assessment is required to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on the matter which is basis of the alleged escapement of income that was taxable. The tribunal after considering the facts noted that in the original assessment, the issue was expressly dealt with by the assessing officer. Even assuming if it is not so, if by necessary implication it can be shown that the assessing officer in the original assessment has expressed his opinion on the matter then reassessment proceedings would be bad in law.
13. As noted above, the tribunal had placed reliance on the decision in the case of **Ram Krishanan Kulwant Rai Holdings Private Limited**, the facts of the said case would be relevant which in our view are more or less identical to the facts of the case on hand. In the said case, the assessee was a private limited company which had filed its return of income admitting the total income of Rs. 12,44,401/-.Originally the said assessee was a partnership firm and it was converted into a private limited company under the Companies Act. The partnership firm revalued its assets on November 30, 2008 and the value increased to an extent of Rs. 1,17,24,04,974/- but book value of the assets on the date of revaluation was Rs. 52,16,526/-. The assessment was reopened and the assessing officer held that the total revalued value of the capital accounts of all the four partners stood at Rs. 1,17,32,87,069,51/- that the shares were allotted to the partners of the firm for a total amount of Rs. 10,00,000/- and that the balance has given a credit of loan to the partners of the erstwhile firm in the same proportion as

their share capital of the firm. In the said case, the assessing officer held that this was a deviation stipulated under Section 47(xiii) of the Act for exemption from capital gains and therefore made the addition towards short term capital gains and it may not be taxed thereto. The appeal filed before Commissioner of Tax was dismissed and the further appeal to the tribunal was allowed and challenging the said order, the revenue preferred the appeal before the High Court. The following paragraphs of the said decision which had dealt with the facts of the said case would be relevant as we have noted the facts of the case on hand are also more or less identical.

8. After hearing the parties, in our considered view, the CIT(A) did not take into consideration the specific ground raised by the assessee contending that the Assessing Officer erred in treating the registration of the partnership firm to a company under Part IX of the Companies Act, 1956 does not amount to a conversion of a partnership firm into a company as contemplated under Section 47(xiii) of the Act. The CIT(A) also did not take note of the fact that post conversion of the partnership firm into a company, the total balance in capital account of all the partners stood at Rs.1,17,32,87,070/-, that consequently, shares were allotted to the partners of the firm for a total amount of Rs.10 lakhs and that the balance of Rs.1,17,22,87,070/- was given as to the credit to the partners of the erstwhile firm in the same proportion as in the firm.

9. The assessee specifically stated that upon conversion of a firm into a joint stock company under the provisions of Part IX of the Companies Act, 1956, the assets and liabilities were vested into the company by virtue of law <http://www.judis.nic.in> and that there was no

transfer of assets. It was further contended that there was no dissolution of the firm or distribution of assets among partners, which is a condition precedent to tax the transaction under Section 45(4) of the Act. In support of their contention, the assessee referred to various decisions of the Tribunal and the High Courts.

14. In the said case, the Commissioner of Income Tax opined that the shares worth Rs. 10,00,000/- were given a credit of loan to the partners of the erstwhile firm in the same proportion and this has to be treated to fall foul of the conditions stipulated in Section 47(xiii) of the Act. The court found that the CIT(A) did not take into consideration the legal issue involved i.e. when the firm is succeeded by a company with no change either in the number of members or in the value of assets with no dissolution of the firm and no distribution of the assets with change in legal status alone, whether there is transfer “as contemplated under Section 2(47) and Section 45(4) of the Act”. In this regard, the court took into consideration the decision in **CADD Centre Versus Assistant Commissioner of Income Tax** ⁷ and the decision in **Commissioner of Income Tax Versus Texspin Engineering and Manufacturing Works** ⁸. Ultimately the legal position was culled out as follows:-

14. In our considered view, the legal position having been well settled that when vesting takes place, it vests in the company as they exist. Therefore, unless and until the first condition of transfer by way of distribution of assets is satisfied, Section 45(4) of the Act will not be attracted. Therefore, in the facts and

⁷ (2016) 383 ITR 258 (Mad)

⁸ (2003) 263 ITR 345 (Bom)

circumstances of the case, we find that there is no transfer by way of distribution of assets.

15. The above decision would squarely apply to the facts and circumstances of this case and the tribunal rightly took note of the decision and granted relief to the assessee.

16. The decision in the **K.T.C. Automobiles** relied on by the revenue will be wholly inapplicable as the facts noted in paragraphs 9 and 12 of the judgment, ultimately it was held that the liability to pay tax on the profit and gains of such transfer of capital asset does not fall on the erstwhile firm. This decision is wholly against the revenue. The revenue placed on the decision of the **Commissioner of Income Tax-23 Versus Mansukh Dyeing and Printing Mills** ⁹. The facts of the case have been noted in paragraphs 4 to 6 in the said judgment which clearly shows that the contribution of all four partners put together was Rs. 11.50 lakhs whereas each of them had got Rs. 7.97 crores upon the revaluation and two of the existing partners had withdrawn part of their capital and the revenue's case was new partners were immediately benefited by the credit to their capital accounts of the revaluation amount and in such factual position, it was held that the asset so revalued and the credit into capital accounts after respective partners can be said to be transfer "which falls in the category of otherwise" and therefore the provisions of Section 45(4) inserted by Finance Act, 1987 with effect from 01.04.1988 shall be applicable. The facts being entirely different, the said decision does not in any manner assist the case of the revenue.

⁹ 2022 SCC Online SC 1618

17. For all the above reasons, we are of the definite view that the learned tribunal rightly dismissed the appeal filed by the revenue.

18. In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

**(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE**

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- PRAMITA/SACHIN)

