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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-01-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

TCA Nos. 92 and 93 of 2013

Shri K.Pandiarajan

AJ-25 Old No.AJ 54 Shanthi Colony, 4th Street, 9th
Main Road, Annai Nagar, Chennai – 600 040.

..Appellant in TCA.No.92
of 2013

Smt R.Hemalatha

AJ-25 Old No.AJ 54 Shanthi Colony, 4th Street, 9th
Main Road, Annai Nagar, Chennai – 600 040.

..Appellant in TCA.No.93
of 2013

Vs

The Assistant Commissioner
Of Income Tax,
(Now the Deputy Commissioner of Income tax)
Company Circle IV (1)
Chennai 34.

..Respondent in both
TCA's

Common Prayer: Appeal filed under Section 260A of Income Tax Act,
1961 against ITA.Nos.1776 and 1777/MDS/2012 for the assessment year
2009-2010 on the file of the Income Tax Appellate Tribunal, Madras "C"
Bench.



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TCA No.	For Appellant	For Respondent
92 of 2013	Mr.R.Vijayaraghavan and Mr.SP.Chidambaram for M/s.Subbaraya Iyar Padmanabhan Ramamani	Mr.T.Ravi Kumar Senior Standing Counsel Mr.S.Abubacker Sidhic Junior Standing Counsel
93 of 2013	Mr.R.Vijayaraghavan and Mr.SP.Chidambaram for M/s.Subbaraya Iyar Padmanabhan Ramamani	Dr.S.Sathiya Narayanan Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

A common order is passed in both these appeals as the facts and legal issues arising for determination are common and identical in both cases.

2. The appellants are shareholders in a company by name Ma Foi Managements Consultants Limited (in short ‘Company’/‘Ma Foi’). The present appeals relate to assessment year (AY) 2009-2010. Returns of income were filed by the appellants claiming that a sum of one Million Euros received in the financial year relevant to the subject AY was exempt as a capital receipt in terms of the Income tax Act 1961 (in short



‘Act’). The issue was taken up for assessment and by an order dated 27.12.2011, the assessing authority rejected the claim.

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3. The submissions of the appellant as put forth by Mr.Mr.R.Vijayaraghavan, learned counsel, are as follows. Both appellants were founders of the Company. They had entered into a strategic alliance with an entity by name Vedior NV (in short ‘Vedior’) based in Amsterdam, Netherland. This was formalised by way of a shareholders agreement dated 30.04.2004 (in short ‘agreement’) wherein the parties had been Vedior Asia BV, the appellants, the Company and Ma Foi Employees Welfare Trust.

4. The 2004 shareholders agreement provided for shareholding of 76.33% to be held by Vedior, and 23.52% jointly by the appellants. The agreement specifically provided that the respective shareholding as aforesaid, would not be transferred by either party, without extending the Right of First Purchase (ROFP) to the other party.

5. While so, the appellants had come know that Vedior was in consultation with an entity by name Randstad Holding, Netherlands (in short ‘Randstad’) negotiating its own acquisition by the latter. Aggrieved, it invoked the ROFO available under Article 7.1 of the agreement, under



threat of legal action, vide legal notice dated 14.06.2008 (in short 'legal notice').

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6. On being put to notice of the impending dispute, and wishing to avoid a legal tangle, Randstad agreed to settle the matter with the appellants and for this purpose entered into a Memorandum of Understanding dated 20.06.2008 (in short 'MoU') whereunder they promised to pay a 'success sharing bonus' to the appellants. The remittance as aforesaid was to be paid in five instalments, the first, of one Million Euros followed by four instalments of 0.5 Million Euros each.

7. The payment of one Million Euros was conditional upon the parties executing the MoU and the appellants withdrawing the legal notice that had been issued by them to Randstad. It is the aforesaid sum that the appellants had claimed as a capital receipt, exempt from tax. As far as the other instalments were concerned, being four instalments of 0.5 Million Euros each, they have offered the same to tax in the subsequent years of receipt.

8. The assessing authority, however, disagreed with the appellants, bringing the amount of one Million Euros to tax as business income, assailing which a first appeal was filed before the Commissioner of Income Tax (Appeals) (in short 'CIT(A)'). The CIT(A) confirmed the



order of assessment, however shifting the head of income from business to ‘other sources’ under Section 56 of the Act.

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9. The appellants were unsuccessful in second appeal as well and the Tribunal confirmed both the orders of the lower authorities. Hence, these tax cases before us, that have been admitted on 21.02.2013 on the following substantial questions of law:-

1. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the amount received by assessee for forgoing the right to initiate legal proceedings for breach of contract terms providing for pre-emptive right to purchase shares held by M/s. Vedior in M/s.MaFoi Management Consultants Ltd. is taxable as revenue receipt?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the amount paid to assessee was only towards signing the agreement and not for withdrawal of legal notice ignoring the terms of agreement dated 20.08.2008?’

9. The appellants rely on the following judgments:-

1. *Guffic Chem (P) Ltd. v. Commissioner of Income Tax & Anr.*¹

2. *Oberoi Hotel Pvt. Ltd. v. Commissioner of Income-Tax*²

3. *B.G. Shah v. Commissioner of Income-Tax*³

4. *Baroda Cement & Chemicals Ltd. v. Commissioner of Income Tax*⁴

¹ 332 ITR 602 (SC)

² 236 ITR 903 (SC)

³ 162 ITR 23 (Bom)

⁴ 158 ITR 636 (Guj)



5. *Commissioner of Income Tax v. J.Dalmia*⁵

10. Dr.S.Sathiya Narayanan, learned Senior Standing Counsel appearing for the Department would firstly point out that there are three concurrent orders as against the appellant. He takes us in detail through the 2004 shareholders agreement, legal notice dated 14.06.2008 and the MoU, pointing out that the interpretation of those documents by the Income tax authorities was correct and the conclusion that the amount was liable to tax, unimpeachable.

11. He would submit that no referable question of law would arise in such an event, where there was no perversity in the understanding of facts and the authorities had taken a view in accordance with the documents placed before them. In all, he would pray that the questions be answered in favour of the revenue and the appeals be dismissed.

12. We have heard the detailed submissions of both learned counsel. The facts are not in dispute. The appellants had founded Ma Foi, a company engaged in the arena of human resource management, internationally. The shareholders agreement dated 30.04.2004, in turn refers to a share purchase agreement, that is not part of the records, in terms of which, Vedior had agreed to purchase 45,87,694 equity shares comprising of 76.33% of the issued share capital of Ma Foi. The

⁵ 149 ITR 215 (Del)



remaining shares of 23.52% continued to be held by the Founder minority shareholders, the appellants herein.

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13. The parties agreed that they would bound by the terms and conditions of the 2004 shareholders agreement for the betterment of the business and mutual benefit of the parties. We now refer to, and extract the relevant recitals in the agreement. The term ‘transfer’ has been defined to mean ‘*sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber the Shares;*’

14. Article 7 deals with ‘put option’ and ‘call option’ and Article 7.1 deals with scope and ambit of permitted transfers in the following terms:-

‘7.1 Permitted Transfers

Unless otherwise permitted hereunder, the Minority Shareholders cannot Transfer the Shares held by such Minority Shareholders without the prior written approval of Vedior which shall only be given in its discretion. It is expressly understood that no Minority Shareholder shall Transfer any Shares held by the Minority Shareholder unless the proposed transferee executes a Deed of Adherence. Without prejudice to the terms contained in this Agreement, in the event Vedior wishes to transfer its Shares held in Ma Foi to any third party or any other body corporate, it shall first offer the same to the Promoters at the same price offered by such third party or any other body corporate and on the same terms and conditions. If the Promoters are unable or unwilling to purchase the same at that value within a period of 30 days from the date of offer, then: (i) Vedior has the right to transfer the said Shares to any other third party or



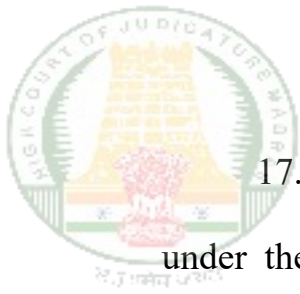
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any other body corporate, however at a price not less than the price at which it was offered to the Promoters; and (ii) if Vedior does transfer the said Shares to such third party or any other body corporate then Vedior shall procure that such third party or other body corporate shall offer to acquire the Minority Shares from the Minority Shareholders at such price and on the same terms and conditions. It shall be noted that such pre-emptory rights do not apply if Vedior is transferring its shareholding to any other company in the Vedior N.V. group of companies.'

15. While so, in the financial year relevant to the assessment year in question, the appellants submit that they had come to understand from market sources, that the holding company of Vedior, Vedior NV was in talks with an entity by name Randstad primarily headquartered in the Netherlands, and with extensive business interests in Europe and Netherlands, to take over all entities in the Vedior group. As a result, all entireties in the Vedior group, including the holding Company Vedior NV and subsidiaries, including Vedior Asia BV, would be taken over by Randstad.

16. According to appellants, this constituted a breach of the ROFO that they were entitled to, under the 2004 shareholders agreement. Hence, a legal notice came to be issued by the appellants on 14.06.2008 to both Vedior Asia BV and Vedior NV, wherein they express their anguish in respect of the market talks relating to the takeover of Vedior.



17. The appellant pointed out that, in such an event, the covenants under the 2004 shareholders agreement, particularly clause 7.1, would stand breached. They concluded by saying that the appellants had communicated their intention to purchase their shares back in accordance with clause 7.1 as early as on 01.06.2008 to which there had been no favour of response from Vedior.

18. At paragraph 10 of the legal notice, they state that they had no intention of having any legal relationship with Randstad and hence, cannot be forced, by virtue of the proposed acquisition of Vedior by Randstad, to have a business relationship with an entity with whom they did not wish to have any association.

19. The legal notice ensued in a round of discussions qua the parties, culminating in MoU dated 20.06.2008 entered into between the authorised representatives of Randstad, and the appellants. The MoU reads as follows:-

'Dear Rajan and Latha,

Following our last spirited discussions I am happy to share with you that the Randstad Board is prepared to approve the arrangement that we agreed on Sunday, August 3. You will understand that our offer constitutes a final gesture of compromise that is made in order to open the way to a constructive and mutually beneficial working relationship. It is made on the condition that you will give us your strong commitment to not again in the next few years challenge or



renegotiate the terms of our agreements and to focus your energy on the success of Ma Foi in India.

The terms proposed on this basis can be summarized as follows:

Success sharing bonus

Randstad will agree to Vedior Asia BV making available a special success sharing bonus with a total value of up to €3M and allocated to the following events:

1. €1,0M as unconditional payment upon signing of this agreement and withdrawal of the Iyer & Thomas letter referred to below.

2. €0,5M as guaranteed performance bonus payable in January 2009 with no performance conditions other than that Ma Foi will work diligently to combine Team4u, and the depute businesses of Emmay HR and Ma Foi (staffing) into a joint Mass Customized Staffing business under the name Randstad.

3. €0,5M for achieving a 7.5% (compared to 6% currently) market share threshold or showing consistent organic growth of 40% (defined as Compound Annual Growth Rate over 4 quarters starting 1/7/2008).

4. €0,5M for achieving a 10% market share threshold or showing consistent organic growth of 40% for an additional year ending 30/6/2010 (same definition).

5. €0,5M for achieving a 12.5% market share threshold or showing consistent organic growth of 40% for an additional year ending 30/6/2011 (same definition).

6. General Condition for all the above points:

- Any tax implications are the responsibility of the bonus recipients.

- While we have stated Euro equivalents for convenience, it is Intended that all amounts due under this bonus structure will be payable in Rupees at the rate of 65 Rupees per Euro.

- 3, 4, and 5 are subject to DSO remaining below 60 days and EBITA remaining above 3.5%.

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Your commitment not to challenge the current shareholder structure

In exchange for the above concessions by Randstad - which improve your share in the anticipated value creation - you will formally confirm that you will no longer and not again challenge Randstad's shareholder rights based on article 7.1 of the Shareholders Agreement dated 30th April 2004 and you will Instruct Iyer & Thomas to withdraw their letter dated 14th June 2008.

.....

.....

We would request that you return this letter signed for your approval, so that it can serve as term-sheet for more formal agreements going forward.

Looking forward to many more years of great success together.

Kindly yours,

Jos Huijbregts

Sd/-

For agreements

Colin Reader

Sd/-

Rajan

Sd/-

Latha

Sd/-

20. The appellants have argued that the payment of one Million Euros has been received as a pre-condition for execution of MoU as well as withdrawal of legal notice sent by them wherein they have invoked clause 7.1 of the 2004 shareholders agreement.

21. We agree that the amount has been paid in settlement of, and as a measure of avoiding legal action as indicated by the appellant in their legal notice. Consideration for loss of agency, loss of business



opportunity, non-compete and other negative covenants have historically been treated as capital receipts in the computation of income under the Income Tax Act, 1961.

22. With effect from 01.04.2003, clause (iv)(a) has been inserted in Section 28 to provide that any sum, whether received or receivable in cash or kind under an agreement for not carrying out any activity in relation to business, would be taxable as business income.

23. Hence, on and from 01.04.2003 any consideration received towards non-compete fee would be taxable in terms of Section 28(va) of the Income Tax Act. However, amounts received towards other negative covenants within the sphere of business arrangements will continue to be treated as capital receipts.

24. The genuineness of the business arrangement inter se the parties has not been questioned by the Income Tax Department. In our understanding, 2004 shareholders agreement granted rights to appellants to purchase, as a first right, the shares of Vedior in the Company. By being acquired by Randstad, the entitlement of the appellants to first purchase has been negated/effaced.

25. In *Guffic Chem (P) Ltd.* (supra), the Supreme Court considered the taxability of receipts and their classification as capital or revenue. The



question that had been framed for determination was whether a payment under an agreement not to compete (negative covenant) is a capital or a revenue receipt.

26. In that context, the Supreme Court notes that payment towards a non-compete negative covenant was always treated as a capital receipt and it is only vide the amendment with effect from 01.04.2003 that the receipt of non-compete fee was made taxable. This judgment is an authority for the proposition that payments towards non-compete fee would be treated as exempt till 01.04.2003 and taxable thereafter.

27. In *Oberoi Hotel Private Ltd.* (supra), the Supreme Court considered the taxability of a receipt for giving up of first option of purchase/lease of hotel. The factual scenario is similar to the present case. The Court holds that an amount received as consideration for giving up a right to purchase/lease/operate the property, would be capital in its hands, as contra distinguished with consideration for settlement of rights under a trading contract.

28. The former relates to injury inflicted on a capital asset, and giving up a contractual right that results in the loss of a source of income. So too in the present case, where the assessee was denied the right of first purchase in terms of the agreement between the parties.



29. The Bombay High Court in *B G Shah V. CIT* (supra) was concerned with consideration for non-performance of tenancy and held that compensation received for termination of tenancy agreement on account of non-performance was a capital receipt as the tenancy was itself a capital asset.

30. The decisions of the Gujarat and Delhi High Court in *Baroda Cement and Chemical Ltd.* (supra) and *J Dalmia* (supra) would support the conclusions we have arrived at. In both cases, the right to sue was held to be a capital asset, the assessing authority bringing to tax the compensation received as capital gains. Ultimately, the Court quashed the demands on the ground that the question of capital gains would not arise in the absence of cost of acquisition.

31. Hence, the Department has consistently been taking the view that the right to sue would constitute a capital asset and there is neither necessity nor justification, to take a different view in the present case.

32. Dr.Sathiya Narayanan has referred to Section 111 of the Companies Act 1956 arguing that there could be no limitation imposed on the transfer of shares. This argument is misconceived on the facts and circumstances of the present case, as Section 111 does not impose an embargo as against the parties negotiating conditions inter se in regard to



the disposal of shares consensually, and by agreement. The conditions in this case, are self-imposed, voluntary and contractual.

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33. There is no impediment to the free transfer of shares, subject to the right of first offer being made to the other party. There is no compulsion to accept the offer, and the party receiving the offer may accept the same, only at his/her discretion. Hence, the legal impediment as contemplated under Section 111 of the Companies Act, being an absolute limitation on the transfer of shares, does not arise in the present case.

34. Yet another reason for negating the claim is that the compensation had been remitted by Randstad and not Vedior. This is not fatal to the claim as the purpose of the payment had been only to persuade the appellants to accept the arrangement between Randstad and Vedior, and Randstad was successful in its persuasion.

35. It is hence, immaterial as to whom among the two entities had paid the compensation to the appellants, and there is thus nothing untoward in the remittance having originated from Randstad. This is all the more for the reason that the Vedior group of concerns had been taken over by Randstad, and the remittance having been made by Randstad is thus in the natural course of events.



36. In light of the detailed discussion as above, the substantial questions of law are answered in favour of the appellant and these appeals are allowed. No costs.

(A.S.M.,J.) (M.S.K.,J.)

08-01-2026

Index: Yes
Speaking order
Neutral Citation: Yes

mpl



To

1. The Assistant Commissioner of Income Tax,
(Now the Deputy Commissioner of Income tax)
Company Circle IV (1)
Chennai 34.

2. The Income Tax Appellate Tribunal,
Madras “C” Bench, Chennai.



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TCA Nos. 92 and 93 of 2013



DR.ANITA SUMANTH J.

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