आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**]**

आयकर अपील सं./I.T.A. No. 618/Mds/2016
निर्धारण वर्ष **/**Assessment year : 2007-2008

M/s. The Hindustan Lungi Company, 104,Gangadaraswamy Madalaya Street, Pichanoor, Gudiyatham. [PAN AAAFH 2361P]	**Vs.**	The Assistant Commissioner of Income Tax, Circle –I, Vellore
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	**:**	Shri. A.S. Sriraman, Advocate
प्रत्यर्थी की ओर से /Respondent by	**:**	Shri.Ashish Tripathi, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing	**:**	11-01-2017
घोषणा की तारीख /Date of Pronouncement	**:**	25-01-2017

आदेश / O R D E R

In this appeal filed by the assessee, it has altogether raised eight grounds of which grounds No.1, 7 & 8 are general in nature needing no specific adjudication.

2. Vide its grounds 2 to 5, assessee is aggrieved on an addition of Rs.10,78,576/- made under the head income from capital gains applying u/s.45(4) of the Income Tax Act, 1961 (in short ‘’the Act”).

3. Facts apropos are that assessee a firm had filed return of income for the impugned assessment year declaring income of ₹18,14,131/-. Assessee firm consisted of two partners and were doing the business of manufacturing and selling of lungies. On 21.12.2006, the firm was dissolved. One of its partner Shri. S. Tamilsevan took over the business of the firm alongwith its assets and liabilities as appearing in the books of the firm, on the date of dissolution. Ld. Assessing Officer noted that assessee was having two vacant immovable property sites and on dissolution Shri. S. Tamilsevan had taken over these properties also. As per ld. Assessing Officer Sec.45(4) of the Act stood attracted. Properties measured 2919 sq.ft and 2851 sq.ft and were assigned a fair market value ₹12,57,860/- at the rate of Rs.218 per sq.ft. After deducting cost of ₹1,79,284/- shown in the books capital gains of ₹10,78,576/- was worked out and taxed.

4. Aggrieved, assessee moved in appeal before ld. Commissioner of Income Tax (Appeals). Argument of the assessee was

that dissolution of the partnership was a result of a family arrangement. As per the assessee its partners were brothers. Relying on the judgment of jurisdictional High Court in the case of *CIT vs. Kay Arr Enterprises & Ors. 299 ITR 348*, assessee submitted that a family arrangement in the form of a dissolution would not result in transfer. Further as per the assessee, dissolution deed dated 21.12.2006 clearly indicated that there was no distribution of capital assets. As per the assessee, there was only settlement of accounts and there was no transfer of capital assets. Further, as per the assessee, a dissolution by operation of law would not result in a notional transfer of capital asset. For this argument reliance was placed on the judgment of Jurisdictional High Court in the case of *CIT vs Vijayalakshmi Metal Industries 256 ITR 540*. Further, as per assessee there was specific clause in the dissolution deed whereby partners agreed not to revalue the assets. Reliance was placed by the assessee on the judgment of Hon'ble Punjab and Haryana High Court in the case of *Raman Lal Khanna vs. CIT 84 ITR 217* and that of judgment of Hon'ble Andhra Pradesh High Court in the case of *Chalasani Venkateswara Rao vs. ITO 349 ITR 423*.

5. However, ld. Commissioner of Income Tax (Appeals) was not impressed by the above arguments. According to him by virtue of judgment of Hon'ble Bombay High Court in the case *of CIT vs. A.N. Naik Associates 265 ITR 346,* the word ''otherwise" used in Sec. 45(4) of the Act took into its sweep, not only cases of dissolution but also reconstitution of a partnership resulting in transfer of asset to a retiring partner. He held that Sec. 45(4) of the Act was correctly applied by the ld. Assessing Officer and confirmed the addition.

6. Now before me, ld. Authorised Representative strongly assailing the orders of the lower authorities submitted that when a dissolution was effected by the operation of law, Sec. 45(4) of the Act would not be attracted. Reliance was placed on the judgment of Hon'ble Madhya Pradesh High Court in the case of CIT vs. *Moped & Machines 281 IT 52*. Further as per ld. Authorised Representative dissolution in the case of the assessee was on account of family settlement between two brothers. Reliance was placed on the judgment of *Kay Arr Enterprises & Ors* (supra). In any case, according to him there was a specific clause in the dissolution deed which excluded revaluation of assets. Thus according to him, lower authorities fell in error in applying Sec. 45(4) of the Act.

7. Per contra, ld. Departmental Representative strongly supported the orders of the authorities below.

8. I have heard the rival contention and perused the orders of the authorities below. Sec.45(4) of the Act is reproduced hereunder:-

> *''(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer''.*

It is not disputed that assessee firm was dissolved on 21.12.2006. Claim of the assessee is that this dissolution was a result of family arrangement was not substantiated through any evidence. Ld. Authorised Representative could not bring to our notice any clause in the dissolution deed dated 21.12.2006, which would corroborate his argument that the dissolution was a result of any family arrangement. Judgment of Jurisdictional High Court in the case of *Kay Arr Enterprises & Ors* (supra) would apply only where reconstitution was on account of family arrangement so as to avoid possible litigation. Hence this case would not come to the aid of the assessee. The

dissolution was also not on account of operation of law since there was no death or insolvency of any partner. It was a voluntary dissolution. Hence the judgment of Hon'ble Madhya Pradesh High Court in the case of *Moped & Machines (supra*) would also not come to the aid of the assessee. Coming to the judgment of Hon'ble Andhra Pradesh High Court in the case of *Chalasani Venkateswara Rao* (supra) what was held in para 22 of the judgment is reproduced hereunder:-

> *''22 In the light of the above decisions, which are binding on us, we hold that the Income-tax Appellate Tribunal was not correct in confirming the orders passed by the Commissioner of Income-tax (Appeals) and the respondent. When the appellant was paid Rs. 15 lakhs by Y. Kalyana Sundaram in full and final settlement towards his 50 per cent. share on the dissolution of the firm, there was no "transfer" as understood in law and, consequently, there cannot be tax on alleged capital gain. The appellant was correct in law in contending that the amount he received from Y. Kalyana Sundaram is towards the full and final settlement of his share and such adjustment of his right is not a "transfer" in the eye of law. It is a recognized method of making up the accounts of the dissolved firm and the receipt of money by him is nothing but a receipt of his share in the distributed asset of the firm. The appellant received the money value of his share in the assets of the firm. He did not agree to sell, exchange or transfer his share in the assets of the firm. Payment of the amount agreed to be paid to the appellant under the compromise was not in consequence of any sale, exchange or transfer of assets to Y. Kalyana Sundaram. Moreover, as rightly contended by the assessee, up to the assessment year 1987-88, section 47(ii) of the Income- tax Act, 1961, excluded these transactions. From assessment year 1988-89, in the case of dissolution of a firm, only the firm is taxable on capital gains on dissolution under*

section 45(4) of the Income-tax Act, 1961, and not the partner. Section 45(4) states as follows :

> "45.(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be charge able to tax as the income of the firm, association or body, of the pre vious year in which the said transfer takes place and, for the purpose of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer."

Thus, it is clear that the Legislature, even though it was aware of the above decisions, did not choose to amend the law by making the partner liable when it amended the Income-tax Act, 1961, by introducing clause (4) to section 45 by the Finance Act, 1987, with effect from April 1, 1988, and made only the firm liable. Therefore, the contention of the assessee has to be accepted and that of the Revenue is liable to be rejected''.

The above case does not aid the assessee, but in facts helps the case of the Revenue that Sec. 45(4) of the Act stood attracted. As noted by Hon'ble Bombay High Court in the case of *A.N.Naik Associates (supra)* the expression ''otherwise'' appearing in section 45(4) of the Act takes within its perimeters, even a reconstitution whereby a right or rights in the property of the firm stood extinguished in favor of the partners. I am therefore of the opinion that Sec. 45(4) of the Act was rightly

applied by the lower authorities. Grounds No. 2 to 5 stand dismissed.

9. Vide Ground No.6, grievance of the assessee is that a disallowance of Rs. 5,00,000/- made by the ld. Assessing Officer was confirmed by the ld. Commissioner of Income Tax (Appeals).

10. Assessee had in its Trading Account charged certain expenditure under the head ''Production Wages''. Observation of the ld. Assessing Officer was that assessee could not the support the expenditure with any evidence. An adhoc disallowance of Rs.5,00,000/- was made.

11. Aggrieved, assessee moved in appeal before ld. Commissioner of Income Tax (Appeals) but did not meet with any success. Ld. Commissioner of Income Tax (Appeals) specifically noted that ld. Authorised Representative of the assessee had agreed for the disallowance before the Assessing Officer.

12. Now before me, ld Authorised Representative submitted that considering the volume of transactions of the assessee production wages claimed was reasonable. However, no evidence was produced before me in support of such claim. Details of the total wage cost and the total revenue earned by the assessee from its

operations were also not made available. In these circumstances, I do not find any reason to interfere with the orders of the lower authorities. Ground No.6 is dismissed.

13. In the result, the appeal of the assessee stands dismissed.

Order pronounced on Wednesday, the 25th day of January, 2017, at Chennai.

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai
दिनांक/Dated:25th January, 2017
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	3. आयकर आयुक्त (अपील)/CIT(A)	5. विभागीय प्रतिनिधि/DR
2. प्रत्यर्थी/Respondent	4. आयकर आयुक्त/CIT	6. गार्ड फाईल/GF