

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 8TH APRIL 2008 / 19TH CHAITHRA 1930

ITA.No. 170 of 2000(M)

ITA.128/COCH//1995 of I.T.A.TRIBUNAL,COCHIN BENCH
.....

APPELLANT/APPELLANT:

M/S.THE COMMON WEALTH TRUST(INDIA) LTD.,
SOUTH MANANCHIRA ROAD, KOZHIKODE.

BY ADV. SRI.P.BALACHANDRAN

RESPONDENTS:

THE COMMISSIONER OF INCOME TAX,
CALICUT.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 08/04/2008, ALONG WITH ITA NO.135 OF 2000, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

.....
I.T.Appeal Nos.170 & 135 of 2000
.....

Dated this the 8th day of April, 2008.

JUDGMENT

C.N.Ramachandran Nair, J.

The connected appeals filed by the appellant arise from order of the Tribunal upholding levy of capital gains on land acquired from the appellant by the Government during the previous years relevant for the assessment years 1990-91 and 1991-92. The land acquired originally belonged to Basel Mission Trading Co. which was declared as an enemy property during the first world war and taken over by the British Government. The British Government thereafter transferred the property to a U.K. Company by name Commonwealth Trust Limited. The property in the form of land and buildings remained that of British company until 1977. However, in the year 1977 the High Court approved a scheme of amalgamation whereunder the landed properties of the British company namely, the amalgamating company was transferred to the petitioner which is an Indian company. During the previous years relevant for assessment years 1990-91 and 1991-92, Government of Kerala acquired some extent of land from the company and paid compensation. The company did not offer the compensation

received for assessment under the head "capital gains" for the reason that it had not spent any amount towards cost of acquisition. Even though the factual position was not controverted, the officer assessed capital gains on the compensation amount which is upheld by the first appellate authority and the Tribunal, against which these appeals are filed.

2. Sri.P.Balachandran, Senior counsel appearing for the appellant contended that the land in respect of which compensation for acquisition was received, originally belonged to Basel Mission which was acquired by the British Company as enemy property. Thereafter the property was transferred to British company and in turn to the assessee-company under the scheme of acquisition and since no payment was made for acquisition of land, there was no cost of acquisition and so much so, capital gain does not arise. He has relied on various court decisions including that of the Supreme Court in support of his contention that capital gain does not arise in a case where there is no cost involved in the acquisition of property. Senior counsel for the Revenue on the other hand contended that by virtue of Section 55(2), the appellant is liable to pay tax on the capital gains by adopting the value of the land as on 1.1.1974. We do not think we should answer the question on the facts based on which decision was rendered by all the authorities including the Tribunal because we are of the view that the

assumption by all the authorities that there was no consideration in the acquisition of property by the assessee is incorrect. In fact some of the documents produced in court pertain to amalgamation. We find that the scheme of amalgamation approved by the High Court involved transfer of shares to the shareholders of the foreign company from which the property was transferred to the petitioner under scheme of amalgamation approved by the High Court. In other words, if shares were transferred to the shareholders of the foreign company, then the transfer of property to the appellant-company is against consideration in the form of value of shares allotted to the shareholders of the amalgamating company. Share capital is a liability of the company to the shareholders and so much so, value of shares allotted constitute value of the property acquired by the company in the course of amalgamation. So much so, we are of the view that the acquisition of property in the course of amalgamation involved payment of consideration, though in the form of allotment of fully paid shares to the shareholders of the amalgamating company. If this is the position, then the assessee will not be entitled to contend that the acquisition of land by them in the course of amalgamation did not involve any cost to them. Since orders are based on wrong assumption of facts and without examining the nature and content of the scheme of amalgamation approved by the High

Court under which the property vested in the assessee-company, we set aside the orders of the Tribunal and that of lower authorities and remand the matter to the Assessing Officer for fresh consideration after verifying the terms of amalgamation approved by the High Court and after giving an opportunity of hearing to the assessee. However, we make it clear that if cost of acquisition is adopted as the value as on 1.1.1974, then the value fixed by the Tribunal shall be adopted for the sake of finality so that another round of litigation is avoided on this ground.

C.N.RAMACHANDRAN NAIR
Judge

T.R.RAMACHANDRAN NAIR
Judge

pms