IN THE PUNJAB & HARYANA HIGH COURT AT
CHANDIGARH

Date of Decision: 10.01.2013

ITA No.353 of 2011

Commissioner of Income Tax – II, Jalandhar …Appellant

Versus

Ashwani Chopra …Respondent

ITA No.354 of 2011

Commissioner of Income Tax – II, Jalandhar …Appellant

Versus

Ashwani Chopra …Respondent

ITA No.355 of 2011

Commissioner of Income Tax – II, Jalandhar …Appellant

Versus

Arvind Chopra …Respondent

ITA No.356 of 2011

Commissioner of Income Tax – II, Jalandhar …Appellant

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CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Sethi, Advocate,
for the appellant.

Mr. Akshay Bhan, Advocate,
for the respondent.

HEMANT GUPTA, J.

This order shall dispose of afore-mentioned four appeals filed under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') arising out of an order passed by the Learned Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in respect of Assessment Year 2007-08. However, for facility of reference the facts are taken from ITA No.354 of 2011.

The Revenue has raised the following substantial questions of law:

i. Whether the Hon'ble ITAT was right in law in confirming the relief allowed by the learned CIT (A) in respect of the addition of Rs.2,09,47,604/- being capital gain on the compensation received?

ii. Whether the Hon'ble ITAT was right in law in holding that the assessee has only inchoate right to receive the compensation till the final outcome of the decision of the Hon'ble Apex Court?

However, we find that the following question of law arises for consideration:

> "Whether the amount of compensation paid to the assessee to settle inequalities in partition, thus, a provision of owelty, represents immovable property and is not an income exigible to tax?"

The said question of law arises out of the fact that during the course of assessment proceedings, the Assessing Officer found that the assessee (Group A) has received compensation from Group B at the time of partition of properties of group of M/s Hind Samachar Ltd. and that the said amount has been kept in Fixed Deposit Receipts as per the orders passed by the High Court as well as by the Hon'ble Supreme Court. The learned Assessing Officer considered the family settlement and found that 8.56% of Rs.24 crores of compensation is the share of the assessee (Ashwani Chopra) and consequently, levied long term capital gain on the said amount.

There were two groups i.e. Group 'A', based at New Delhi and Group 'B', based at Jalandhar of share-holders of M/s Hind Samachar Ltd., a company founded by the veteran journalist late Lala Jagat Narian. Group 'A' is headed by Smt. Sudarshan Chopra, whereas Group 'B' is headed by Shri Vijay Kumar Chopra. After prolonged litigation, during the pendency of an appeal before this Court against an order of the Company Law Board, parties agreed to settle their disputes. Earlier, Group 'B' has given a proposal for dividing the assets and businesses of the family including the company into two lots i.e. lot-1 containing the Jalandhar and Ambala units, whereas lot-2 containing Delhi and Jaipur units. Group 'B' offered Group 'A' to choose one of the lots. Instead of choosing one of the lots, Group 'A' filed an application under Section 8 of the Arbitration & Conciliation Act, 1996 which was dismissed by the Company Law Board on 17.05.2004 laying down the modalities for the division of the company. The said order was challenged before

this Court. The parties agreed to settle the disputes amicably as recorded by this Court in the order dated 19.10.2005. The relevant extract of the order dated 19.10.2005 reads as under:

> "The appellants as well as Group A have decided to settle the matter amicably. It has been agreed that the appellants will be entitled to lot-2, in terms of the enclosures accompanying the letter dated 07.03.2000 constituting proposals formulated by Group A (herein) and available on the record of the Company Law Board. It goes without saying that lot-1 as determined by the enclosures to the aforesaid letter dated 07.03.2000, shall be retained by Group A. The afore stated arrangement shall be entail that the assets and the liabilities of the company and the firms under lot-2 located in the territories of Delhi and Jaipur shall fall to the share of the appellants and the assets and the liabilities of the company and the firms under lot-1 in the territories of Jalandhar and Ambala shall fall to the share of Group A. Additionally, the appellants have exercised their option to accept Rs.24 crores under paragraph (xx)(i) of the modified proposal. This amount has been agreed to be deposited by Group A with the Company Law Board, by way of Bank draft, for onward transmission to the appellants within six weeks from today."

In terms of such settlement, lot-1 in the territories of Jalandhar and Ambala fell to the share of Group 'A' and lot-2 in the territories of Delhi and Jaipur fell to the share of Group 'B' with the condition of payment of Rs.24 crores. Such amount of Rs.24 crores was deposited with the Company Law Board. Now the dispute regarding date of split is pending before different forums including before the Hon'ble Supreme Court. It is so apparent from the order of the Assessing Officer, which reads as under:

> "12. As stated by the assesse's counsel in letter dated 13.11.2009, the order dated 04.11.2008 of Hon'ble Punjab & Haryana High Court has been challenged by Group B shareholders by way of SLP in Supreme Court of India. It is, thus, apparent that Group A, of which the assessee is a member, is not aggrieved with the amount of

> compensation of Rs.24 crores paid to it by Group B and the Group A has exercised the option of accepting Rs.24 crores before High Court. Further, a perusal of the Hon'ble Supreme Court's order shows that the Group B, vs. Shri Vijay Kumar Chopra & others have filed appeal against the order dated 04.11.2008 of the Punjab & Haryana High Court and the Hon'ble Supreme Court has ordered to list the case on the notified date and that till that date the order passed by the High Court shall not operate."

The assessee filed an appeal against the said order. The learned Commissioner of Income Tax (Appeals) held that distribution of assets including sum of Rs.24 crores was not complete during the relevant year as the matter was sub-judice and the assessee was not allowed to use the money by the order of this Court, therefore, the sum of Rs.24 crores transferred to the assessee and other members of Group A did not accrue to the income of this group including the appellant. Such order has been affirmed in appeal as well by the Tribunal.

Learned counsel for the appellant has vehemently argued that the amount of Rs.24 crores was deposited by the other Group, as compensation to the assessee in the present set of appeals. Though the assessee cannot use money in terms of the order passed by this Court, but the fact remains that the interest on such deposit is an income and is liable to tax. It is argued that the order of Commissioner of Income Tax and that of the Tribunal are based upon misapprehension of facts and law, therefore, the capital gain is payable on the amount of compensation received.

On the other hand, learned counsel for the respondent relying upon the 'principle of owelty', argued that the amount of

compensation received by the assessee, is to equalize the inequalities in the partition and, thus, such amount is nothing but an immovable property. It is contended that such amount received by the assessee is not an income, but a share in the immovable property though paid in cash, as it is the cash value to settle inequalities in partition. Therefore, such amount cannot be treated as income liable to capital gain. Reliance has been made to the judgment of Hon'ble Supreme Court reported as **T.S.Swaminatha Odayar Vs. Official Receiver of West Tanjore** AIR 1957 SC 577 and the Division Bench judgments of Madras High Court in **Commissioner of Income Tax Vs. AL. Ramanathan** (2000) 245 ITR 494 and **Commissioner of Income Tax Vs. Kay Arr Enterprises & others** (2008) 299 ITR 348 apart from the Division Bench judgments of Karnataka and Gauhati High Court in **Commissioner of Income Tax Vs. R. Nagaraja Rao** (2012) 207 TAXMAN 74 and **Ziauddin Ahmed Vs. Commissioner of Gift-Tax, Assam, Nagaland, Meghalaya, Manipur & Tripura** (1976) 102 ITR 253 respectively

In T.S.Swaminatha Odayar's case (supra), the Supreme Court was examining the nature of provision in a partition decree for a payment by one co-sharer to another of a sum of money for equalization of shares. It was held that such payment in the partition settlement was an owelty for adjustment or equalization of shares and no more. The Court observed as under:

> "14. It must be remembered that the decree was one for partition of the properties belonging to the joint family of which the defendant No.3 and the appellant were coparceners. While effecting such a partition it would not be possible to divide the properties by metes and bounds there being of necessity an allocation of properties of

> unequal values amongst the members of the joint family. Properties of a larger value might go to one member and properties of a smaller value to another and therefore there would have to be an adjustment of the values by providing for the payment by the former to the latter by way of equalization of their shares. ….."

It has been held that when an owelty is awarded to a member of a joint family on partition for equalization of the shares on an excessive allotment of immovable properties to another member of the joint family, such a provision of owelty ordinarily creates a lien or a charge on the land taken under the partition. The member to whom excessive allotment of property has been made on such partition cannot claim to acquire properties falling to his share irrespective of or discharge from the obligation to pay owelty to the other members. What he gets for his share is, the properties subject to the obligation to pay such owelty and that by necessary implication, an obligation on his part to pay owelty out of the properties allotted to his share. It was observed as under:

> "18. It therefore follows that when an owelty is awarded to a member on partition for equalization of the shares on an excessive allotment of immovable properties to another member of the joint family, such a provision of owelty ordinarily creates a lien or a charge on the land taken under the partition. A lien or a charge may be created in express terms by the provisions of the partition decree itself. There would thus be the creation of a legal charge in favour of the member to whom such owelty is awarded. If, however, no such charge is created in express terms, even so the lien may exist because it is implied by the very terms of the partition in the absence of an express provision in that behalf. The member to whom excessive allotment of property has been made on such partition cannot claim to acquire properties falling to his share irrespective of or discharged from the obligation to pay owelty to the other members. What he gets for his share is therefore the properties allotted to him subject to the obligation to pay such

> owelty and there is imported by necessary implication an obligation on his part to pay owelty out of the properties allotted to his share and a corresponding lien in favour of the members to whom such owelty is awarded on the properties which have fallen to his share."

A Full Bench of Kerala High Court in a judgment reported as **Parvathi Amma Vs. Makki Amma** AIR 1962 Kerala 85 explained the concept of owelty and held that such amount is not a debt being a liability for which charge is provide under sub clause (b) of Clause (4) of Section 55 of the Transfer of Property Act, 1882. The Court observed as under:

> "4. …The case of owelty is, in our view, very similar to the consideration for a release of the kind mentioned above. The co-sharer who accepts the lesser properties gives a part of his share to the other co-sharer in consideration of a sum of money which is called 'owelty'. In other words, owelty represents the unpaid price of the excess land taken from one co-sharer and given to another on partition; it is as if a portion of the property that really belonged to B has been assigned to A and A is made to pay the price therefore to B. B is therefore entitled to a vendor's share for the price remaining unpaid.
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> xxx xxx xxx
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> 7. ….As we have found owelty to be the price of land taken from one co-sharer & allotted to another on a partition, and that the charge for owelty is in substance, a vendor's charge for unpaid price, it is within the exception (vii) in the above definition and is, therefore, outside the purview of the Kerala Agriculturists Debt Relief Act, 1958."

In the concurring, but separate judgment by Hon'ble Mr. Justice Baghavan, J. it was mentioned that owelty is only part of the properties partitioned though it may not be part of the original properties. It was held to the following effect:

> "16. …Putting the idea again differently, the share of the member with the excessive allotment is that excessive allotment less the owelty carved out of it and the share of the other member is the

> lesser allotment added with the owelty carved out of the excessive allotment. This again means that owelty is only part of the properties partitioned; it may not be part of the original properties; but, if I may borrow the expression of Maclean, C.J. in the Calcutta case which I shall hereinafter refer to, it is the substituted property which the sharer gets in the partition."

In **Sivaswami Chettiar Vs. Muthuswami Chettiar & others** (1965) 78 LW 695, the Madras High Court held that owelty represents the difference arising out of unequal partition and is a nature of property and not a debt. The Court observed as under:

> "2. Owelty of course represents the difference arising out of unequal partition and is in the nature of property and not a debt. When equal partition for some reason or other is not possible, in order to adjust rights and equities, the sharer who has been allotted property in excess of his due is directed to make good to the other sharer who has been allotted less, to the extent of such excess. In my view, such owelty is clearly not a liability in the nature of a debt, but is property…."

The Madras High Court in a judgment reported as **Palanikumar Pillai Vs. Palanikumar Pillai & others** (1988) 1 LW 448 explained the scope of 'provision of owelty'. While referring to the Supreme Court judgment in Badri Narain Prasad Choudary & others Vs. Nil Rattan Sarkar (1978) 3 SCR 467, held to the following effect:

> "23.....A Court may also be confronted with a situation, namely, that the item of property is not capable of physical partition or is such that, if divided, it will lose its intrinsic worth, in such a case, that item is allotted to one and compensation in money value is given to the other and if such a course is not possible it is sold outright and the sale proceeds divided between the joint owners. All the aforesaid and similar other methods are adopted by Courts in making an equitable partition of the joint properties either with

> the consent of the parties or where such consent is not forthcoming in exercise of its own discretion.
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> Whatever method is adopted, it is only to implement the process of equitable partition. It would well-night be impossible for a Court to effectuate a partition on an equitable basis, if it should be held that it is under a legal obligation to divide every item of the joint property in specis. Where properties are susceptible of such division, the Court adopts it. Where it is not, it adopts one or other of the alternative methods narrated above. ....."

The Madras High Court in AL. Ramanathan's case (supra) returned a finding that an amount of Rs.8 lacs received in a family settlement to settle the disputes between the family is not subject to capital gain. It was observed as under:

> "2. A perusal of the records goes to establish that dispute arose in that family and the family arrangement was arrived at in consultation with the panchayatdars and accordingly realignment of interest in several properties had resulted. The family arrangement was arrived at in order to avoid continuous friction and to maintain peace among the family members. The family arrangement is an agreement between the members of the same family intended be generally and reasonably for the benefit off the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security off the family by avoiding litigation or by saving its honour. So, the family arrangements are governed by principles which are not applicable to dealings between strangers and the family arrangement among them is for the interest of the family, for the harmonious way of living. So, such realignment of interest by way of effecting family arrangement among the family members would not amount to transfer."

In Kay Arr Enterprises case (supra), there was transfer of shares as also consideration in cash. The Court held that such rearrangement of shareholding in the Company is to avoid possible litigation among the family members and is prudent arrangement and

such transfer of shares is not alienation. The Court held to the following effect:

> "9. In the instant case also, the Tribunal found that the rearrangement of shareholdings in the company to avoid possible litigation among family members is a prudent arrangement which is necessary to control the company effectively by the major shareholders to produce better prospects and active supervision or otherwise there would be continuous friction and there would be no peace among the members of the family. Such a family arrangement intended either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour cannot be concluded as any other dealings between strangers, as such a family arrangement is for the interest of the family and for the harmonious way of living. Therefore, such a realignment of interest by way of effecting a family arrangement among the family members would not amount to transfer."

The Division Bench of Karnataka High Court in R. Nagaraja Rao's case (supra) has held that partition is not a transfer and adjustment of shares, crystallization of the respective rights in the family properties cannot be construed as a transfer in the eye of law. When there is no transfer of asset, there is no capital gain and consequently there is no liability to pay tax on capital gains.

In view of the aforesaid principles of law, we find that the payment of Rs.24 crores to Group A is to equalize the inequalities in partition of the assets of M/s Hind Samachar Ltd. The amount so paid is immovable property. If such amount is to be treated as income liable to tax, the inequalities would set in as the share of the recipient will diminish to the extent of tax. Since the amount paid during the course of partition is to settle the inequalities in partition, therefore

deemed to be immovable property. Such amount is not an income liable to tax. Thus, the amount of owelty i.e. compensation deposited by Group B is to equalize the partition represents immovable property and will not attract capital gain.

The argument that the assessee is liable to tax being interest on cash, suffice it to say, that such question or fact does not arise from the orders of the Tribunal. Consequently, the question of law is answered against the Revenue and in favour of the assessee leading to the dismissal of appeal though on different grounds.

(HEMANT GUPTA)
JUDGE

10.01.2013 **(RITU BAHRI)**
Vimal **JUDGE**