

T.R.Balasubramaniam vs The Asst Commissioner

ID: F2J-C-2367 **Court:** Madras High Court

Case: T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 **Date:** 2025-04-30

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Madras High Court T.R.Balasubramaniam vs The Asst Commissioner on 30 April, 2025 Author: Anita Sumanth Bench: Anita Sumanth 2025:MHC:1145

T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2025

PRONOUNCED ON : 30.04.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH and THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

T.C.(A) Nos. 438 of 2008, 34 of 2009 & 5 of 2010

T.C.A.No. 438 of 2008

T.R.Balasubramaniam .. Appellant

vs

The Asst Commissioner Of Income Tax City Circle VII(2), Chennai. Respondent(s)

TCA NO. 34 of 2009

T.M.Ramaswamy (Since Deceased) 1.T.R.Natarajan 2.T.R.Viswanathan 3.T.R.Muthukrishnan 4.T.R.Srinivasan 5.T.R.Balasubramanian 6.Kanthimathi Santhanam 7.Lalitha Subramaniam 8.Hema Subramaniam 9.Praveena Goutham .. Appellants

Vs

The Assistant Commissioner Of Income Tax City Circle VII (2), Chennai. .. Respondent

1/16

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T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 TCA NO. 5 of 2010

T.R.Srinivasan Appellant(s)

Vs

The Asst Commissioner Of Income Tax City Circle- VII(2) Chennai- 34.

Respondent(s)

Prayer in T.C.A.No. 438 of 2008: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 22.12.2006 in ITA No.1714/MDS/1997 for AY 1991-

92.

Prayer in T.C.A.No. 34 of 2009: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 22.12.2006 in ITA No.1713/MDS/1997 for AY 1991-

92.

Prayer in T.C.A.No. 5 of 2010: Appeal filed under Section 260A of the Income- Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 20.11.2009 in ITA No.1388/MDS/1998 for AY 1991-92.

(In all TCAs) For Appellants : Mr. Varun Ranganathan

For Respondent : Mr.T.Ravi Kumar Senior Standing Counsel

COMMON JUDGMENT

(Per :- Dr. ANITA SUMANTH.,J) A common order is passed in respect of these three Tax Case (Appeals) relating to Assessment Year (AY) 1991-92 filed at the instance of three shareholders (hereinafter, referred to as 'Appellants') in a company called 2/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 Jupiter Press (P) Ltd (in short, 'Company'). TC(A) Nos. 438 of 2008 and 34 of 2009 have been filed challenging an order of the Income Tax Appellate Tribunal (Tribunal/ ITAT) dated 31.01.2007.

2. All three Appellants had been successful before the Commissioner of Income tax (Appeals). Appeals had been filed at the instance of the Revenue and the Tribunal initially had, vide order dated 09.03.2005 dismissed the appeal filed in the case of Mr.T.R.Srinivasan. A Miscellaneous Petition had been filed by the Revenue in respect of the aforesaid order that came to be allowed on 15.10.2006 recalling order dated 09.03.2005 and restoring the appeal to the file of the Tribunal, ultimately to allow the appeal by order dated 20.11.2009 assailed in T.C.No. 5 of 2010.

3. In allowing the appeal as above, the Tribunal noted that co-ordinate Benches of the Tribunal had, in the case of Mrs.Lakshmi Muthukrishnan, allowed the Departmental appeals on 06.02.2006 and in the cases of Mr.T.M.Ramasamy (another shareholder in whose case the appellate order has attained finality) and Mr.T.R.Balasubramaniam, allowed the Departmental appeals on 22.12.2006.
4. The substantial questions of law raised in T.C.(A) No. 5 of 2010, admitted by this Court on 19.01.2010 are:-
- 1)Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the orders in the case of Lakshmi Muthukrishnan, T.M. Ramasamy 3/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 and T. R. Balasubramaniam are not per-incuriam when the applicability of Sec. 55(2)(b)(iii) was not considered at all in any of these cases as is apparent from the orders ?
 - 2) Whether the judicial discipline would require orders that are per-incuriam to be considered as binding precedents and be followed subsequently ? 3) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that for the assets distributed on liquidation, the cost of acquisition of the asset, in the hands of the shareholders be determined by applying Sec.49(1)(iii)(c), as against Sec. 55(2)(b)(iii) of the Income-Tax Act, 1961?"
5. The substantial question of law admitted in T.C.No 438 of 2008 and and T.C(A)No.34 of 2009 is extracted below:
- Has not the Income Tax Appellate Tribunal erred in wrongly applying the provision with reference to cost of acquisition of shares in the case of assets received by a shareholder on liquidation of a company?
6. The sole legal issues that arises relates to the computation of cost of acquisition under the provisions of the Income Tax Act, 1961 (in short, 'Act') of an asset distributed on liquidation of the Company, the asset being the immovable property at 552, Mount Road, Madras (in short, 'Asset') that belonged to the Company.
7. The appellants had purchased 120 shares of the Company at the rate of Rs.21,000/- per share in the Company. The Company went into voluntary liquidation on 21.05.1990. The asset had been valued at a sum of Rs.1,36,51,000/- and the value thereof was distributed to the Appellants in 4/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 proportion to their share-holding, being 120 out of 500 shares amounting to Rs.32,76,240/- or Rs.27,302/- per share.
8. In respect of AY 1991-92, returns of income were filed by the Appellants declaring total income wherein, inter alia, capital gains was computed at a sum of Rs.7,56,240/-. The computation canvassed by the Appellants is in line with Section 55(2)(b)(iii) which, according to the Appellants, ought to be the basis for the computation.
9. Intimations under Section 143(1)(a) of the Act were issued and the matters taken up for scrutiny thereafter concluding in orders of assessment accepting the returns in full. Proceedings for re-assessment were initiated thereafter by notices issued under Section 148 of the Act. The proceedings for re-assessment were finalized wherein the assessing authority computed the cost of acquisition in terms of Section 49(1)(iii)(c) of the Act at a sum of Rs. 32,69,795/-.
10. Aggrieved with the above computation, a first appeal was filed before the Commissioner of Income-Tax (Appeals) (CIT(A)), who allowed the appeal on 16.03.1998. Aggrieved the Revenue filed appeals before the Tribunal. One of the appeals came to be dismissed 09.03.2005 as against which a Miscellaneous Petition had been moved by the Revenue. The Miscellaneous Petition came to be allowed on 06.10.2006 recalling order dated 09.03.2005 and listing the appeal for hearing de novo. 5/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010
11. Ultimately, the revenue's appeal came to be allowed on 20.11.2009, aggrieved with which, T.C.(A) No. 5 of 2010 has been filed by the Assessee. As far as the remaining two Appellants are concerned, the appeals of the Revenue came to be allowed on 06.02.2006 and 22.12.2006 as against which the remaining two Tax Case (Appeals) have been filed.
12. The issue arising for consideration in all three appeals is one and the same. The stand of the Appellants is that Section 55(2)(b)(iii) overrides the provisions of Section 49(1)(iii)(c) as the Appellants had acquired the shares of the Company prior to liquidation. Hence it was appropriate, according to them, that Section 55(2)(b)(iii) be adopted as a mode of computing the cost of acquisition as against Section 49(1)(iii)(c).
13. We have heard the detailed submissions of Mr.Varun Ranganathan, appearing for the appellant and Mr.T.Ravi Kumar, learned Senior Standing Counsel, appearing for the respondent /Income-Tax Department.
14. The rival provisions which are sought to be invoked by the parties, being Section 55(2)(b)(iii) and Section 49(1)(iii)(c), are extracted below:-
- '55. Meaning of 'adjusted', 'cost of improvement' and 'cost of acquisition'.
-
- (2)For the purposes of sections 48 and 49, "cost of acquisition",—
- (b) in relation to any other capital asset,— 6/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 (iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains"
- in respect of that asset under section 46, means the fair market value of the asset on the date of distribution' '49. Cost with reference to certain modes of acquisition.-
- (1) Where the capital asset became the property of the assessee-
-
- (iii)
- (c) on any distribution of assets on the liquidation of a company',

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be. Explanation.—In this sub-section the expression 'previous owner of the property' in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of this sub-section.

15. In addition, we extract below Section 46 that deals with the computation of capital gains on the distribution of assets by companies in liquidation and Section 48 that sets out the method of computation.

46. Capital gains on distribution of assets by companies in liquidation.- (1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45. 7/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 (2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

48. Mode of computation.- The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto.

16. The provisions of Section 46(2) as applicable to shareholders, states that where a shareholder, on the liquidation of a company, has received any money or asset from the company, he shall be chargeable to tax under the head 'capital gains' in respect of the money received or market value of the assets as on the date of distribution, reduced by dividend received by him and the resultant sum shall be the full value of consideration for the purposes of Section 48 of the Act. Under Section 48, the expenditure incurred wholly and exclusively in connection with the transfer of the asset, and the cost of acquisition and improvement of the asset shall be deducted to arrive at the 8/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 capital gain.

17. Applying the aforesaid provisions to the present case, we find that the unique factor that has transpired in the assessee's case is that both Section 49(1)(iii)(c) and Section 55(2)(b)(iii) would stand attracted as, the transfer of shares, firstly, by way of extinguishment right therein and in consideration of which the appellant received the asset from the company (transaction 1) and secondly, by transfer of the asset received on liquidation and in consideration of which the assessee received actual money (transaction 2).

18. Relevantly both transactions, as aforesaid have taken place in the same financial year as the appellants have proceeded to sell their share of the property to MRL in the same year where the asset had been distributed to them, fusing the applications of both applicable statutory provisions.

19. In order to decide these appeals, it would suffice to advert the order of the Tribunal in the case of T.R.Srinivasan as this is the speaking order, which has analysed the provisions clearly and in a methodical manner. The operative portion of that order is extracted below:

8. Section 46(2) provides that when a shareholder receives money or any other asset from a company on its liquidation, then such shareholder shall be charged to capital gains tax.

This capital gain is on account of transfer of shares effected by extinguishment of rights in the shares. The section further provides that sales consideration for the purpose of computing capital gains will be money actually received or fair market value of the asset on the date of distribution, as the case may be. The said sales consideration will be as reduced by the 9/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 amount assessed u/s.2(22)(c). In our case there is no such amount assessed and therefore, for the sake of brevity, in this order reference to fair market value of the asset on the date of distribution will be presumed to be after such reduction and no further reference will be made to sec.2(22)(C). Again, for the sake of brevity, let us name this transaction, i.e. the transaction of transfer of shares as transaction A. The transfer of shares in this case is the first taxable event and since the assessee has received an asset other than money on liquidation, capital gains will be computed by deducting the cost of shares from the fair market value of the asset. The shares have been acquired by the assessee himself and therefore, there is no question of adopting any cost to the previous owner. The year of taxability will be the year in which the distribution of assets has taken place, i.e. the year in which the assessee received the asset. In the present case, the assessee has received the asset in financial year 1990-91 and hence capital gains would be taxed in assessment year 1991-

92. This entire transaction A can be presented in arithmetical form by taking a hypothetical example. Let us assume the following :

1. cost of acquisition of shares by the assessee Rs.100/-

2. fair market value of property received Rs.150/-

3. sales consideration of property sold Rs.170/-

4.cost of acquisition of property to the company Rs. 80/-

Thus, transaction A will be as follows:

Computation (1) Sales consideration for transfer of shares Rs. 150/- (being fair market value of property on the date of distribution received on liquidation) Less: Cost of acquisition of shares Rs.100/-

Rs. 50/- capital gains chargeable to tax in assessment 10/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 year 1991-92 It is presumed that the assessee has offered the above capital gain for taxation in assessment year 1991-92.

Now we come to the second transaction which we shall name it as transaction B. This pertains to the sale of property received by the assessee on liquidation. Though the assessee has sold the property in the same financial year, i.e. in 1990- 91, yet for the time being let us presume that it is sold in financial year 1991-92, i.e. in the subsequent financial year. The property is sold for Rs.170/-• The question which now arises is as to what should be

the cost of acquisition of the asset to compute capital gains. For this purpose, there are two provisions, viz., section 49(1)(il)(c) and section 55(2)(b)(iii), both of which are extracted above. Sec.49(1)(iii)(c) provides that where a capital asset becomes the property of the assessee on distribution of asset on the liquidation of a company, the cost of acquisition of the asset shall be deemed to be the cost to the previous owner. Sec.55(2)(b)(iii) provides that where the asset becomes the property of the assessee on the distribution of assets on liquidation, and if the assessee has been assessed to capital gains tax in respect of that asset under sec.46, the cost of acquisition would be the fair market value of the asset on the date of distribution. It will be noticed that both the provisions provide for the cost of acquisition of an asset which becomes the property of the assessee on the distribution of assets by a company on its liquidation. However, the applicability, of either of the provisions would depend on the situation in each case. If the assessee has been charged to capital gains tax on receipt of the property, then, as per sec.55(2)(D)(ii), the cost of acquisition would be the fair market value of the asset on the date of distribution. In the present case, at the end of paragraph 8 we have made a presumption to the effect that the assessee has offered the capital gains of Rs.50/- for taxation in assessment year 1991-

92. Therefore, the provisions of sec.55(2)(b)(iii) would come into play. Accordingly, the presentation of transaction B in such a situation would be as follows :

Computation (2) Sales consideration 11/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 on sale of property Rs.170/-

Less : Cost of acquisition Rs. 150/- (being fair market value of the property on the date of distribution) Rs. 20/- capital gains chargeable to tax in assessment year 1992-93.

To repeat, while presenting the above two computations, we. have presumed, (a) the two transactions have taken place in different years, and (b) the assessee has offered for tax the capital gains arising in the year of its accrual. Let us take another situation. We retain presumption (a) as it is. So far as presumption (b) is concerned, let us presume that the assessee has not offered the capital gains for taxation in the year of its accrual. In that case, in our view. the cost of acquisition will be as per sec.49(1)(II)(C), I.e. it will be the cost to the previous owner. In that case, the arithmetical presentation will be as follows :

Computation (3) Sales consideration of the property Rs.170/- Less: Cost of acquisition to the company Rs. 80/- Rs. 90/- capital gains chargeable to tax in assessment year 1992-93

From the above three computations it can be seen that if the assessee offers capital gains for taxation as they arise, he will be paying tax on total capital gains of Rs.70/-. However, if he has chosen to offer capital gains for tax only in the year of sale of property received on distribution, he will end up paying more tax, i.e. on capital gains of Rs.90/-. This can. be taken to be the additional tax burden invited by the assessee himself for not offering for tax the capital gain arising in transaction A in the year in which the gain accrued.

10. While presenting the computations in paragraphs 8 & 9 above, we have presumed that both the transactions have taken place in different years. However, as mentioned earlier, 12/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 this is not the actual position in the case before us. In the case before us, both the transactions have taken place in the same year and this fact in particular has given rise to the dispute.

As mentioned earlier, sec. 55(2)(b)(iii) comes into play only if capital gains arising from the first transaction has been assessed to tax. In the present case, the question both the transactions have taken place in the same year. In transaction A has not been charged to tax in the earlier The argument of the department is that capital gains arising year and hence, sec.49(1)(ii)(c) will apply. In our considered view, if this interpretation is to be accepted, it would amount to saddling the assessee with higher tax liability for no fault of his. This is one aspect of the matter. Another angle from which the matter can be viewed is this. In point of time, transaction A occurs first and it is only as a result of transaction A, transaction B occurs. Therefore, while preparing the total computation of income, the assessee will first compute capital gains in transaction A and offer it for tax. Thereafter, the assessee will compute capital gains in transaction B and offer it for tax. Under these circumstances, it can be said that the assessee has been assessed to capital gains tax under sec.46 and therefore, provisions of sec.55(2)(b)(iii) will be applied, i.e. the fair market value of the asset on the date of distribution can be taken as the cost of acquisition. The assessee has practically done this only with a slight difference. Instead of making two computations as in computation (1) and computation (2) above, he has integrated both the computations into one as follows :

Computation (4) Sales consideration of the property Rs. 170/- Less: Cost of acquisition of shares Rs.100/-

Rs. 70/- capital gains chargeable to tax in assessment year 1991-92 Thus, If capital gains arising in transaction A are treated as assess to tax earlier, then, whether the computations are separately done as per computation (1) and (2) or they are integrated into one as in computation (4), it makes no difference. However, the departmental view is as follows :

Computation (5) 13/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 Sales consideration of the property Rs. 170/-

Less: Cost of acquisition of the company Rs. 80 Rs. 90/- capital gains chargeable to tax in assessment year 1991-92

The department is canvassing for the above computation despite the fact that capital gains arising in transaction A are being taxed as per computation (4). Again, in our view, computation (5) should be adopted only where the assessee has postponed the taxability of capital gains arising in transaction A. In the present case, the assessee has not postponed the taxability of capital gains but is offering it for tax in the same year in which the gains have accrued. Therefore, it would be just and proper to accept the computation made by the assessee. However, we may hasten to add that so far as this appeal is concerned, we are not accepting the same for the reasons that follow.

20. Having thus accepted the argument of the appellant, the Tribunal proceeds to conclude adverse to the Appellant stating that it was bound by the conclusions of the earlier Benches of the Tribunal that had been decided adverse to the other two Appellants. In fact, the Tribunal could well have referred the matter for the constitution of a Larger Bench as is normally done in such matters instead of which, the Departmental appeal has come to be allowed.

We are of the view that the procedure followed by the Tribunal in this case is incorrect particularly in view of the categorical discussion and conclusion in favour of the Assessee in the paragraphs extracted supra, with which we concur. 14/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm) T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010

21. At any rate, we are now concerned with the substantial question of law on this issue and for this purpose, find that the manner of computation as adumbrated in Computation 4 above, would be the proper methodology for computation of cost of acquisition. This is a case where one has necessarily to take note of the computations of capital gain both in regard to transactions 1 and 2, and the same have rightly been taken note of, and stand encapsulated, in computation 4 above.

22. In light of our conclusion as above, we see no necessity to advert to any of the cases cited as the discussion in the order of the Tribunal would more than suffice. The substantial questions of law are answered in favour of the appellant and against the revenue. These appeals are allowed. No costs. [A.S.M., J] [G.A.M., J] 30.04.2025 Index:Yes Neutral Citation:Yes ssm

To

The Assistant Commissioner Of Income Tax City Circle VII (2), Chennai.

15/16

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T.C.A.Nos. 438 of 2008, 34 of 2009 & 5 of 2010 DR. ANITA SUMANTH.,J. and G.ARUL MURUGAN.,J.

ssm

T.C.(A) Nos. 438 of 2008, 34 of 2009 & 5 of 2010 30.04.2025 16/16 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 05/05/2025 01:18:37 pm)