

Commissioner of Income-tax, Hyderabad v. M/s. Motor and General Stores (P.) Ltd.

Civil Appeal No. 819 of 1966

[1967] 3 SCR 876 | 1967-05-02

Historical balancing charge: transfer of a cinema concern solely for preference shares was an exchange, not a sale for money, so the second proviso to section 10(2)(vii) did not tax the excess over written-down value.

Indian Income-tax Act, 1922: section 10(2)(vii), especially the second proviso | Transfer of Property Act, 1882: sections 54, 118 and 119 | Sale of Goods Act, 1930: sections 2(10) and 4

3-judge bench; unanimous judgment delivered by V. Ramaswami, J. | J. C. Shah, J. | S. M. Sikri, J. | V. Ramaswami, J.

Assessment years: 1956-57

Money consideration was essential to this statutory sale

The Court treated sale as a transfer for a money price. Because the cinema assets were exchanged only for preference shares, the fixed rupee valuation did not itself create a money price.

Operative terms controlled

Earlier board resolutions and recitals used sale language, but the operative clauses made reciprocal transfers of assets and shares. In the absence of ambiguity, recitals could not alter that legal effect.

Stamp valuation did not change the transaction

The Rs.1,20,000 allocation between immovable property/goodwill and movables was treated as serving stamp-duty valuation, not as cash paid or promised.

No sham or bad faith was alleged

The Court's refusal to recharacterize the deed rested on the absence of fraud, mala fides or a cloak concealing another transaction. It did not hold that labels always prevail over legal substance.

Alternative valuation question became unnecessary

The reference also asked whether share market value rather than face value supplied consideration. Once the transfer was held not to be a sale within section 10(2)(vii), that alternative did not determine the appeal.

01 FACTS OF THE CASE

Motor and General Stores (P.) Ltd. owned Sree Rama Talkies at Bobbili. Its board authorized negotiations to sell the concern for Rs.1,20,000, and shareholders confirmed the arrangement. The 21 February 1956 instrument was titled an exchange deed: the company transferred the cinema, machinery, equipment, movables, goodwill and related property, valued in two Rs.60,000 components, and received 5 percent tax-free cumulative preference shares in Sri Rama Sugar and Industries Ltd. with a face value of Rs.1,20,000. For assessment year 1956-57 the company returned Rs.9,823 from the transaction. The officer treated Rs.43,568, the excess realized over written-down value, as profit under section 10(2)(vii); the first appellate authority and Tribunal substantially agreed, while allowing Rs.5,000 for goodwill. On a section 66(2) reference the Andhra Pradesh High Court answered for the assessee (SCR pp.877-878; PDF pp.2-3).

Source: [Primary judgment: facts](#)

02 DISCUSSION BY THE HON'BLE COURT

Section 10(2)(vii) applied only if the building, machinery or plant had been 'sold'. Because the 1922 Act did not define sale, the Court used section 54 of the Transfer of Property Act and sections 2(10) and 4 of the Sale of Goods Act: sale requires money consideration, while reciprocal transfer for another thing is exchange or barter. The operative deed clauses unambiguously exchanged the Schedule I cinema assets for the Schedule II shares. Neither the board resolutions nor sale language in the recitals could control those clauses, and the Rs.1,20,000 valuation was for stamp duty rather than a price paid or promised (SCR pp.879-883; PDF pp.4-8). The broader 'substance' argument also failed on this record. No bad faith, fraud or cloak was alleged; the deed was intended to operate according to its legal terms. Tax liability therefore followed the parties' actual legal rights under the construed instrument, although nomenclature alone would not control a transaction of different true character (SCR pp.883-885; PDF pp.8-10).

Source: [Primary judgment: discussion](#)

03 JUDICIAL DECISION

The Court held that the 21 February 1956 transaction was an exchange, not a sale, and that the income-tax authorities could not apply section 10(2)(vii) to tax the Rs.43,568 excess on that footing. It affirmed the High Court and dismissed Revenue's appeal with costs (SCR p.885; PDF p.10).

Source: [Primary judgment: decision](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Motor and General Stores/the assessee-respondent. The non-cash exchange fell outside the sale-specific historical balancing-charge provision on the deed as proved (SCR pp.883-885; PDF pp.8-10).

Source: [Primary judgment: outcome](#)

05 AKHB REVIEW POINT

AKHB analysis: for a non-cash asset transfer, identify the exact charging language, the legal form created by the operative clauses, and whether any money price was paid or promised. Compare recitals, approvals and operative provisions, but do not replace a genuine deed with a hypothetical taxable transaction merely because the parties assigned rupee values. Conversely, investigate sham, side consideration and modern deeming rules separately. Present depreciation, capital-gains and slump-sale provisions require fresh analysis; this historical section 10(2)(vii) result is not a current non-cash-transfer exemption (based on SCR pp.879-885; PDF pp.4-10).

Source: [Primary judgment: reviewPoint](#)

SOURCE & VERIFICATION

[Supreme Court Reports scan - public eSCR mirror](#)

Full 10-page SCR report read and checked. The editorial headnote and adjacent-report boundary text were distinguished from the judicial opinion and operative order.

[Open cited source rendition](#)

Exact source bytes, SHA-256 and 10-page count match catalogue asset 1967_3_876_885; every page was reviewed.

The source verifies Civil Appeal No. 819 of 1966, the stated bench, issues, reasoning and operative result.

No published or archived standalone AKHB note with this source hash, case identity and operative decision was found.

STATUTORY SCOPE

The ruling construes the sale-specific second proviso to section 10(2)(vii) of the repealed Indian Income-tax Act, 1922 through property and goods-law definitions. It does not determine present depreciation recapture, slump sale, exchange, capital-gains, non-cash consideration, anti-avoidance or company-law consequences under later statutes. No current-law or later-treatment clearance was undertaken.

LATER TREATMENT

Source checked 2026-10-11. Later judicial treatment and current statutory applicability have not been comprehensively checked; no current-law or citator clearance is represented.

AI DISCLOSURE

This AKHB research note was prepared with AI assistance from the identified primary report and has not been represented as independently human-reviewed.

PROFESSIONAL DISCLAIMER

General legal and tax research only; not legal or tax advice. Verify the original judgment, the governing historical statutes and subsequent judicial treatment before reliance. The AKHB REVIEW POINT is editorial analysis, not the Court's holding, and no current-law clearance is claimed.