

Commissioner of Income-Tax, Delhi and Rajasthan

Vs

National Finance Ltd

Civil Appeal No. 559 of 1960

(K. Das, M. Hidayatullah, J. C. Shah JJ)

29.01.1962

JUDGMENT

HIDAYATULLAH J. –

This is an appeal against the order of the Income- tax Appellate Tribunal, Delhi Bench, dated May 1/14, 1957, by which the Tribunal, receiving the order of the Appellate Assistant Commissioner held that a loss arising from the sale of certain shares by the respondent company was a capital loss. Subsequent to the order of the Tribunal impugned here, the Commissioner of Income-tax, New Delhi, who is the appellant before us, had moved the Tribunal for a reference to the High Court on certain questions of law said to arise out of the order of the Appellate Tribunal. That application was found to be barred by one day, and since, under the law, the Tribunal had to jurisdiction to extent the time, the application was dismissed. Again the decision of the Tribunal, an application was filed in the High Court under section 66 (3) of the Income-tax Act, but the High Court dismissed the application, agreeing with the Tribunal that the application to the Tribunal for a reference was barred by time. The Co

Before we examine the merits of the case, we shall deal with a preliminary objection raised on behalf of the respondent that the appeal is incompetent, in view of the decision of this court in Chandi Prasad Chokhani v. State of Bihar, where it was held that this court would not entertain an appeal directly from an order of the Tribunal by passing the decision of the High Court, except in very exceptional circumstance. The appellant relies upon the decision of this court in Baldev Singh v. Commissioner of Income-tax and contends that the exceptional circumstances existing in the latter case, and adverted to in the former, covers the present case.

The facts relating to the filing of the application for reference together with the relevant dates are these. The Tribunal's order was passed by two learned Members, who signed their respective orders to different dates. The Accountant Member signed his order on May 1, 1957, and the Judicial Member, on May 14, 1957. The notice of the orders was sent to the Commissioner of Income-tax, New Delhi, and reached his officer by registered post on July 15, 1957. It was received by one Motilal Pathak, a clerk in the office of the Commissioner. Motilal's affidavit shows that he suddenly fell till, and had to take casual leave for the day. He returned to the office the next day, and dealt with the notice received from the Tribunal. By a mischance, which is easy to appreciate, the date stamp for the receipt of the papers was affixed on the 16th, and bore that date instead of the real date, viz., the 15th, on which the papers had actually been received. Relying upon the date stamp, everybody took it for granted that limi

This Court then granted special leave against the order of the Tribunal passed in the appeal before it,

and the question is whether the appeal should be heard or the leave revoked, in view of the decision in Chokhani's case, the attempt was to bypass the decision of the High Court on a question referred to the High Court for decision and also another decision of the High Court that no other point of law arose from the order of the Tribunal. It was held that this court would not allow the High Court to be bypassed, and that an appeal from the decision of the Tribunal in the circumstances was incompetent. A similar view was again expressed in two other cases, viz. Indian Aluminium Co. Ltd. v. Commissioner of Income-tax and Kanhaiyalal Lohia v. Commissioner of Income-tax. In all the three cases, reliance was placed by the appellants therein upon the decisions of this court in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax and Baldev Singh v. Commissioner of Income-tax. It was pointed out the judgment

The assessee company is the National Finance Ltd., New Delhi. It is a public limited company, which was incorporated in 1943. It deals in shares and securities and also as financiers. The present case arises from a deal in 3,000 shares of the Madhusudan Mills Ltd., Bombay, by the assessee company. In the year of account, May 1, 1949, to April 30, 1950, corresponding to the assessment year 1951-52, the assessee company sold these shares suffering a loss of Rs. 5,48,712-8-0, which it claimed as one on the sale of its stock-in-trade. The Income-tax Officer and Appellate Assistant Commissioner held it to be a capital loss. The Appellate Tribunal, Delhi Bench, reserved the decision, and held in favour of the assessee company. The only question in this appeal is whether the decision of the Tribunal is right.

The assessee company belongs to a group of companies controlled by one Lala Yodh Raj Bhalla and certain persons associated with him. It is convenient to describe these persons as the "Yodh Raj Bhalla group." These companies are (1) Jaswant Sugar Mills Ltd., (2) Jaswant Straw Boards Ltd., (3) National Finance Ltd., (4) National Construction and Development Corporation Ltd., (5) Ganesh Finance Corporation Ltd. and (6) Raghunath Investment Trust Ltd. The interrelation of these companies is very intimate, and they are practically owned by the "Yodh Raj Bhalla group". To understand this, the following analysis of the shareholdings of these companies must be sufficient :

#(1) Jaswant Sugar Mills Ltd. 2,00,000 shares Rs.(i) Jaswant Straw Board Ltd. 44,845(ii) National Finance Ltd. 67,390(iii) National Construction and Development Corporation Ltd. ----- 1,60,035 (i.e. is over 80 per cent.)(2) Jaswant Straw Board Ltd. 6,176 shares(i) National Finance Ltd. 4,783(ii) National Construction and Development Corporation Ltd. 500 ----- 5,200 odd (or nearly 84 percent.)(3) National finance Ltd. (assessee company) 50,000 shares Ganesh Finance Corporation Ltd. 48,000 (or over 96 per cent.)(4) National Construction and Development Corporation Ltd. 1,30,504 shares Ganesh Finance Corporation Ltd. 1,30,500 (almost all)(5) Ganesh Finance Corporation Ltd. 50,000 shares Raghunath Investment Trust Ltd. 49,795 (99.6 per cent. of the capital)(6) Raghunath Investment Trust Ltd. 10,000 shares(i) Mr. Yodh Raj Bhalla 1,500(ii) Mrs. Bhalla 1,000(iii) Mr. N. C. Malhotra (brother-in-law) 1,000(iv) Mr. Ram Prasad (father-in-law) 1,000(v) Mr. Dina Nath (Secretary) 1,000(vi) National Finance Ltd. 3,499(vii) Mr. Piyare Lal Saha 1 -----

9,000 (90 per cent.)###

The resulting position may be stated thus : Ganesh Finance Corporation Ltd. practically owns the assessee company and National Construction and Development Corporation Ltd. Raghunath Investment Trust Ltd. practically owns the Ganesh Finance Corporation Ltd., and "Yodh Raj Bhalla

group" practically on was Raghunath Investment Trust Ltd. Jaswant Sugar Mills Ltd. is practically owner by Jaswant Straw Board Ltd., National finance Ltd., and National Construction and Development Corporation Ltd., and Jaswant Straw Board Ltd. is practically owned by National finance Ltd., and National Construction and Development Corporation Ltd. Thus, the entire group is owned by a consortium and there is no doubt about it.

The shares of Madhusudan Mills Ltd. were acquired in the following circumstances : In July, 1948, Mr. Yodh Raj Bhalla, who was in a position by reason of his holdings in these six companies to influence decisions of the Board of Directors, arranged to purchase 26,547 shares of the Mills from Messrs. Bhadani Brother Ltd., who were the minion agents of the Mills. This block of shares represented about 80 per cent. of the total issued capital of the Mills. The purchase was made at Rs. 400 per share, when the price in tea market was about Rs. 250 per share. Out of the remaining shares which were on the market, 200 shares were purchased at Rs. 252-8-0 per share, which was them the quoted price. Now, these shares were purchased by Jaswant Sugar Mills Ltd., but the money for the purchase of the shares was obtained by borrowing it from some of the other concerns. These companies, as has been shown above, were completely under the control of the "Yodh Raj Bhalla group". The arrangement for the money was as follows :

Rs. 14,75,000 - borrowed from the assessee company.

Rs. 5,00,000 - from National Construction and Development Corporation Ltd.

Rs. 55,00,000 - from the assessee company but advanced by Ganesh Finance Corporation Ltd.

The shares were registered as follows :

10,500 shares registered in the name of the assessee company.

5,400 shares in the name of the National Construction and Development Corporation Ltd., and the balance in the names of the nominees of Jaswant sugar Mills Ltd., which meant, largely, persons belonging to the "Yodh Raj Bhalla group."

On October 9, 1948, the assessee company purchased 15,547 shares at Rs. 400 per share from Jaswant Sugar Mills Ltd., and the amount paid by the assessee company was adjusted towards the purchase price and the balance was paid. In the same day, the remaining 11,000 shares were sold by Jaswant Sugar Mills Ltd. to National Construction and Development corporation Ltd., at Rs. 400 per share. Thus, on that date Jaswant Sugar Mills Ltd. ceased to have any connection with the present matter. It may be pointed out that on the date on which the two transactions took place, the price ruling in the market was Rs. 217-8-0. Before Jaswant Sugar Mills Ltd. parted with the shares, they had appointed a new Board of Directors of the Madhusudan Mills Ltd., and these new directors also belonged to the same group. The managing agency of Messrs. Bhadani Brothers Ltd. was terminated, and on the same day on which the shares were purchased from these managing agents, the assessee company was appointed as the purchasing and selling

On April 7, 1949, 4,500 shares were sold by the assessee company to the National Investment Trust Ltd. at Rs. 181 per share resulting in a loss of Rs. 8,80,000 and on June 1, 1949, another block of 3,000 shares was sold to the National Investment Trust Ltd. at Rs. 180 per shares, resulting in a loss of Rs. 5,86,312. We are not concerned with the loss arising from the first sale which was considered in the assessment year, 1950-51, and in respect of which a reference is pending in the High Court of

Punjab. We are concerned weight the loss in the second year relating to the assessment year, 1951-52. In that year, the loss on the sale of the shares was sought to be set off against the profits made, and the loss practically cancelled the profits. The shares which were sold by the assessee company on the two occasions were sold to one Amrit Bhushan (a relative of Mr. Yodh Raj Bhalla) who sold them the same day to Messrs. National Investment Trust Ltd. at the slender profit of 8 annas per share, which was brokerag

The assessee company was assessed for the assessment year, 1950-51, by the Income-tax Officer, Meerut. In that year, the loss of Rs. 8,78,062-8-0 arising from the sale of 4,520 shares of Madhusudan Mills Ltd. was set off against the profits of the assessee company. The case of the assessee company for the assessment year, 1951-52, was considered by the Income-tax Officer, Central Circle V, New Delhi, to whom the cases of the other companies above-named were also transferred. By looking into the affairs of these companies, he came to learn that the shares of the Madhusudan Mills Ltd. were purchased at a price, which was almost double the current market price, by the "Yodh Raj Bhalla group", and were transferred at the same price, to the assessee company. He found that this was done with a view to removing Messrs., Bhadani Brothers Ltd. from their Managing agency and to securing for the assessee company the purchasing and selling agency of the mill. On the date of the purchase from Messrs. Bhadani Brothers Ltd

Whether a particular loss is a trading loss or a loss on the capital side undoubtedly depends upon the facts of each case. But it has been held, over and over again, that the question is not one of pure fact, and that a mixed question of fact and law is always involved. The cases too which we shall make a reference presently have laid down this proposition, and those cases have also indicated how the matter is to be viewed in the context of facts. In Commissioner of Income-tax v. Ramnarain Sons Ltd. The company was a dealer in shares and also carried on the business of acquiring managing agencies of other companies. The company acquired the managing agency of a textile mill from Messrs. Sassoon J. David and Co. Ltd. and also agreed as part of the same transaction to buy 2,507 shares of the mills. 1,507 shares were purchased at Rs. 2,321-8-0 per share and the remaining 1,000 shares were purchased at Rs. 1,500 per share. These shares were quoted on the market at Rs. 1,610. Later, 4,000 shares were sold at a l

"It seems that the object of the assessee company in buying shares was purely to obtain the managing agency of the third mill which no doubt would have been an asset of an enduring nature and would have brought them profits but there was from the inception no intention whatever on the part of the assessee company to re-sell the shares either at a profit or otherwise deal in them."

The learned Chief Justice then considered the argument that a block of shares might have to be bought, if at all, at a higher price, and observed as follows :

"A dealer in shares may succeed in getting a large number of shares at a price less than the market price if the seller is in difficulties and wants to get rid of his shares and to get liquid assets. But we have to heard of a dealer in shares purchasing a large number of shares at a higher value than the market value. The other circumstance which is equally strong in this case is that the shares were purchased for the acquisition of the managing agency. Therefore the real object of the assessee company was not to do business in these shares, to make profit out of these shares, but to acquire a capital asset out of which it would earn managing agency commission and make profits."

Messrs. Ramnarain and Sons Ltd. then appealed to this court, and the decision of the Bombay High Court was upheld. The judgment of this court is reported in Ramnarain Sons (Pr.) Ltd. v. Commissioner of Income-tax. It was laid down by this court that in considering whether a transaction was or was not an adventure in the nature of trade, the problem must be approached in the light of the intention of the assessee, having regard to the "legal requirements which are associated with the concept of trade or business." Dealing with the price above the market price, which was paid in that case, it was observed :

"Even assuming that the appellants acquired the entire block of 2,507 shares from M/s. Sassoon J. David & Co. Ltd. - the shares transferred to the names of the directors being held by them merely as nominees of the appellants - the price per share was considerably in excess of the prevailing market rate. The only reason for entering into the transaction, which could not otherwise be regarded as a prudent business transaction, was the acquisition of the managing agency. If the purpose of the acquisition of a large block of shares at a price which exceeded the current market price by a million rupees was the acquisition of the managing agency, the inference is inevitable that the intention in purchasing the shares was not to acquire them as part of the trade of the appellants in shares."

The above two decisions are merely the application of a principle of longstanding, which has been stated over and over again in the past. In Oriental Investment Co. Ltd. v. Commissioner of Income-tax that principle was reiterated, and it was held that the object for which a company was formed did not invest the deal with the characteristics of a trade in shares, but that other circumstances along with that fact must be considered to find out the real object of a particular venture.

Before we deal with the present case, one other case of this court may be noticed. In Rajputana Textiles (Agencies) Ltd. v. Commissioner of Income-tax the converse conclusion was reached. There, on the facts and circumstances of the case, it was held that a particular deal in shares was a commercial venture and had all the attributes of an adventure in the nature of trade. In that case, the transaction was not a single or an undivided one with a slump payment, because for the managing agency, Rs. 12,50,000 were paid separately and for the shares, a sum of Rs. 83,98,000 was paid. The two acquisitions being different, the profit on the sale of some of the shares was considered to be a gain on the revenue side.

There is no doubt, whatever, that the shares of the Madhusudan Mills Ltd. were acquired at a price considerably higher than the market price. In fact, the price paid was almost double. Such a deal, from the business point of view, was not prudent, unless the purchaser stood to gain in some other way. It was contended before us that there was a speculative deal in the hope that the price of the shares would firm up, when the textile industries would revive. If this was the intention, then it might possibly be argued that the purchasers miscarried in their calculations, and suffered a loss in a business transaction. But, was this the intention of the directors of Jaswant Sugar Mills Ltd. ? Those who sold the shares were not only in possession of the shares but also of the managing agency of the Madhusudan Mills Ltd., and the intention of the directors of Jaswant Sugar Mills Ltd. was to remove the sellers from their position as managing agents and to get the entire benefit of such or other agencies for themselves

The Income-tax Officer, in deciding this question against the assessee company, pointed out numerous circumstances, which showed clearly that this was not a mere purchase of shares as shares by a speculator, who, buying a big block, sometimes pays slightly more than the market rate.

Bhadani Brothers Ltd. owned not only the shares but also the managing agency, and it is obvious that they would not part with the shares without charging for the managing agency. The price of Rs. 400 per share was so out of proportion to the market price that it indicated, by itself, the acquisition of something more than the mere shares. According to the Income-tax Officer, the real intention was to acquire lucrative agencies of the mills, and this intention, whether it was held by Jaswant Sugar Mills Ltd. or the assessee company or both, was of the same body of persons. The Appellate Assistant Commissioner endorsed the view of the Income-tax Officer; but the Tribunal made a distinction between one company and another; and that d

Reference was made, on this connection, to the transactions with the Dalmia Cement and Marketing Co. Ltd. on which the latter paid the same price, namely, Rs. 400 per share. Perhaps, the Dalmia Company was after the controlling interest in its own way, and it is significant to note that within a short time, those shares again found their way in the hands of the same groups. Similarly, the shares changed hands even within this group through the agency of Amrit Bhushan, no doubt a broker but also a relative of Mr. Yodh Raj Bhalla, who profited only to the extent of 8 annas per share, and bought and sold the shares from one company to another on the same day. All this shows that the affairs of these companies were centrally arranged, and the intention was to benefit the assessee company by the acquisition of a large block of shares at a very much larger price than obtaining in the market, to acquire certain agencies of a profitable character.

In our opinion, this transaction must be regarded as one on the capital side. Shares were never treated as part of the stock-in-trade. They were not sold in the market, but were sold at a loss to another company belonging to the same group, with the obvious intention of setting off the losses against the profits, thus canceling the profits, and saving them from taxation.

In the result, the appeal is allowed with costs on the respondent.

Appeal allowed.

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