

Dalhousie Investment Trust Co. Ltd.

Vs

Commissioner of Income-Tax (Central), Calcutta

Civil Appeals Nos. 581 of 1966

(J. C. Shah, V. Bhargva, V. Ramswami-I JJ)

22.11.1967

JUDGMENT

BHARGAVA J. –

These appeals came up before this court on the 17th April, 1967, when an order of remand was made by this court, asking the Income-tax Appellate Tribunal to submit a further statement of the case. The question that has come up for consideration is :

"Whether, on the facts and circumstances of the case, the surplus derived by the assessee in the sale of its shares and securities in the relevant previous year was a revenue receipt and as such taxable under the Income-tax Act."

The facts and circumstances under which the question was referred by the Tribunal for the opinion of the High Court are mentioned in that order of remand and need not be repeated.

In the order of remand, it was pointed out that it was not possible to find out from the statement of the case whether the Tribunal accepted the explanation of the assessee that, in the previous year relevant to the assessment year 1953-54, the control of McLeod and Co. Ltd. went out of the hands of the directors of the assessee and it was for this reason that the assessee sold the shares of McLeod and Co. It was also pointed out further that the Tribunal had not stated what was the object of the assessee in buying 6,900 ordinary shares of McLeod and Co. It appeared from the order of the Income-tax Officer that these shares were purchased in a number of lots from the year 1948 to 1950, and it was also not stated as to what was the object in buying other securities, and why did the assessee confine its activities mostly to the shares of McLeod and Co. Ltd. and the companies managed by McLeod and Co. Ltd. It was in the light of these omissions that the Tribunal was asked to send a supplementary statement. The

The relevant facts which emerge out of these statement of the case are that the principle activity of the assessee was investment of its capital in shares and stocks. It changed its investments by sale of its shares and stocks from time to time. The income of the company was primarily derived from dividends on shares and interest received by it on the investments. These activities were covered by clause (1), (3) and (4) of the memorandum of association. The activity mentioned as the object in clause (2) is :

"..... to acquire, hold, sell and transfer shares, stocks, debentures, debenture stocks, bonds, obligations and securities issued or guaranteed by any company constituted or carrying on business in British India and in the United Kingdom or in any colony, or

dependency or possession thereof or in any foreign country and debenture stocks, bonds, obligations and securities, issued or guaranteed by any Government, Sovereign, Ruler, commissioners, public body or authority supreme, municipal local or otherwise whether at home or abroad."

In the supplementary statement, the Tribunal has recorded the finding that, in its opinion, the purchases and sales of the shares in question were in pursuit of this clause (2) in the memorandum of association. The Tribunal has further stated that the assessee had not placed any evidence as to the object behind the acquisition of the shares of McLeod and Co. Ltd., and the shares of companies managed by McLeod and Co. Ltd. nor had the Income-tax Officer ascertain the object being such acquisition. The Tribunal was also unable to find out why the assessee had more or less confined its activities mostly to the shares of McLeod and Co. Ltd. and the companies managed by McLeod and Co. Ltd. The facts proved showed that, in the account year relevant to the assessment year in question, 21,046 shares were held by the Kanoria group, including 6,977 shares in McLeod and Co. Ltd., held by the assessee. Mr. C. L. Kanoria resigned his office as director of McLeod and Co. Ltd. on 17th March, 1952, and the approval of the G

It appears to us that the facts and circumstances in this case lead to no other conclusion except that these shares were purchased and sold by the assessee with the motive of earning a profit by such purchases and sales and not with the object of investing its capital in these shares in order to derive income from that investment. It is true that the principal business of the assessee was to invest capital and to derive income from dividends on shares and interest on other investments; but, at the same time, the object contained in the memorandum of association of the assessee company clearly showed that one of the objects was also to deal in shares, stocks, debentures, etc., by acquiring, holding, selling and transferring them. In the years prior to the assessment year, the case put forward by the assessee that the various acquisitions and sales of shares were in the nature of investments was accepted by the department, but such a decision given in the earlier years is not binding in the proceedings for a

This conclusion is further strengthened by the conduct of the assessee as found by the Tribunal in subsequent years. In the year ended 31st March, 1955, the assessee again purchased a large number of shares of McLeod & Co. Ltd. These purchases were made between 23rd August, 1954, and 29th September, 1954. The first purchases were made at a rate of Rs. 150, per share, and the purchases were continued even in the month of September when the rate rose to nearly Rs. 250 per share. This purchase of shares of McLeod & Co. Ltd. in the account year 1954-55, when there was a rising market and when the control was no longer with the Kanoria group and having already passed to the Bajoria group, clearly shows that the Tribunal was not wrong in inferring that the purchases of shares of McLeod & Co. Ltd. were not for the purpose of keeping controlling interest in that company or for investment, but that the shares were being purchased and sold for earning profits, so that the transactions were an adventure in the nature of

In this connection, Mr. A. K. Sen, learned counsel for the appellant, drew our attention to the following view expressed in the remand order :

"We are unable to answer the question referred because the mere fact that an investment company periodically varies its investments does not necessarily mean that the profits resulting from such variation is taxable under the Income-tax Act. Variation of its investments must amount to dealing in investments before such profits can be taxed as income under the Income-tax Act."

Reliance was also placed on the observation of this court in *Bengal and Assam Investors Ltd. v. Commissioner of Income-tax* which were quoted in the remand order and are as follows :

"It seems to us that, on principle, before dividends on shares can be assessed under section 10, the assessee, be it an individual or a company or any other entity, must carry on business in respect of shares; that is to say, the assessee must deal in those shares. It is evident that if an individual person invests in shares for the purpose of earning dividend, he is not carrying on a business. The only way he can come under section 10 is by converting the shares into stock-in-trade, i.e. by carrying on the business of dealing in stocks and shares as did the assessee in *Commissioner of Income-tax v. Bai Shirinbai K. Kooka*."

It was urged that, in this case, the Tribunal has recorded no finding at all that the shares in *McLeod & Co. Ltd.* which were sold by the assessee, were converted by it into stock-in-trade, nor has it been held that the variation of its investments by the assessee amounted to dealings in investments. The facts that we found above show that, so far as the shares of *McLeod & Co. Ltd.* and the allied companies which were sold by the assessee and the income from which has been taxed as revenue income are concerned, the assessee, in fact, deal with them as stock-in-trade. It is true that in the account books they were never shown as such; but we have indicated how the evidence and the material in this case lead to the conclusion that the shares were in fact purchased even initially not as investments, but for the purpose of sale at profits and that they were actually sold with the purpose of earning profits, so that the transaction amounted to an adventure in the nature of trade.

Learned counsel also referred to the decision of this court in *Ramnarain Sons (Pr.) Ltd. v. Commissioner of Income-tax* to urge that the principle consideration in determining whether income from sale of shares is revenue income or capital gain is to find out what was the purpose of purchase of those shares, and, if the purpose was investment, the fact that, in varying the investment, the sale of those shares resulted in a profit will not make that profit revenue income. The principle is perfectly correct, but is not applicable to the case before us on the finding mentioned by us above that even the initial purchase of these shares by the assessee was not for the purpose of investment for earning income from dividends, but was with a view to earn profits by resale of those shares.

In these circumstances, we hold that the High Court was right in arriving at the conclusion that, on the facts and circumstances of the present case, the income derived by the assessee from the sale of its shares and securities in the relevant previous years was revenue receipt and as such taxable under the Income-tax Act. The appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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