

New Era Agencies (Pvt.) Ltd.

Vs

Commissioner of Income-Tax, Bombay City I.

Civil Appeal No. 2462 of 1966

(J. C. Shah, V. Ramaswami-I, V. Bhargava JJ)

28.11.1967

JUDGMENT

RAMASWAMI J. –

The appellant is a private limited company controlled by Mulraj Kersondas and his nominees. It is a dealer in shares, both in forward and ready market. In the year 1942, Mulraj Kersondas obtained control of the Elphinstone Spinning and Weaving Mills (hereinafter referred to as "the Elphinstone Mills"). He also acquired the managing agency of the Elphinstone Mills for a consideration of Rs. 6 lakhs. In 1943, Mulraj Kersondas assigned the managing agency to a private company known as Chidambaram Mulraj & Co. Ltd., whose shareholders were Kulraj Kersondas, his nominees and the appellant. During the years 1942 to 1948 the dealings in shares of the appellant included dealings of Elphinstone Mills also and the profits and loss in the dealings of Elphinstone Mills was taken by the appellant to its revenue account during these years. At the end of the year 1948, the appellant held 5,137 ordinary shares and 1,131 preference shares of the Elphinstone Mills. During the years subsequent to the year 1948, the

On September 25, 1953, Mulraj Kersondas wrote a letter to K. D. Jalan, a well-known businessman of Calcutta, making an offer of sale of 25,000 ordinary shares and 10,000 preference shares of the Elphinstone Mills for a total sum of Rs. 45 lakhs. He stated in that letter the shares offered stood in the names of himself, his family members and his allied concerns. The offer for sale was accompanied by a further offer that, if the offer for sale was accepted, Mulraj Kersondas would obtain the resignation of the present directors of the Elphinstone Mills and would also get appointed as directors person of the choice of K. D. Jalan and that he would obtain the resignation of the present managing agents of the Elphinstone Mills, viz, Chidambaram Mulraj and Co. Ltd. It was further stated in the letter that the price to be paid, the transfer of the shares, the resignation of the directors and the appointment of the new directors of the choice of the purchaser, and the resignation of the managing agents would all be

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 2,34,230 was the income of the assessee ?"

On the direction of the High Court, the Tribunal submitted a supplementary statement of the case and referred the following additional question of law :

"(2) Whether, on the facts and in the circumstances of the case, the amount of Rs. 10,42,990 received by the assessee, as allotted by Mularaj Kersondas out of the sum of Rs. 45 lakhs received by him from Shri K. D. Jalan, represents exclusively the

price of the shares or includes therein any consideration for the procuring of the resignation of the present directors, for obtaining the appointment of the directors of the choice of Shri K. D. Jalan and for the resignation of the present managing agents of the Mills.

(3) If so, what in view thereof should be taken as the sale price of each of the ordinary shares and each of the preference shares sold by the assessee in calculating its income arising therefrom ?"

By its judgment dated April 21, 1964, the High Court answered the first two questions against the appellant and held that, in view of the answer to the second question, the third question did not survive and, therefore, need not be answered. The present appeal is brought to this court on a certificate granted by the High Court under section 66A Of The Indian Income-tax Act, 1922.

The distinction between investment and stock-in-trade, between fixed capital and circulating capital is well-known. In *Californian Copper Syndicate v. Harris* Lord Justice Clerk observed :

"It is quite a well settled principle in dealing with question of assessment of income tax, that where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D of the Income Tax Act, 1842 assessable to income tax. But it is equally well established that enhanced value obtained from realisation or conversion of securities may be so assessable, where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association of persons buying and selling lands or securities speculatively, in order to make gain dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose, and in these cases it is not doubtful that, where they make a gain by a realisation, t

What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts; the question to be determined being - Is the sum of gain has been made a mere enhancement of value by realising a security, or is it a gain made in an operation of business in carrying out a scheme for profit-making ?"

The principle stated in the case was approved in *Commissioner of Taxes v. Melbourne Trust Ltd.*, in *Rees Roturbo Developments Syndicate Ltd. v. Ducker*, and in *Venkataswami Naidu and Co. v. Commissioner of Income-tax*.

With regard to the first question, Mr. Sanat P. Mehta appearing on behalf of the appellant argued that the sum of Rs. 2,34,230 was a capital accretion on the sale of shares and did not represent income from the business in shares of the appellant. It was stated that though the appellant was a dealer in shares it was not acquiring the shares of Elphinstone Mills as its stock-in-trade. The argument was put forward that the appellant was a controlled concern of Mulraj Kersondas and it was a shareholder also of the managing agency company and therefore it was interest in the managing agency. The appellate had purchased the shares of the Elphinstone Mills not with a view to deal with them as a dealer in shares but with view to support the managing agents of the Elphinstone Mills. In our opinion, there is no jurisdiction for the argument put forward on behalf of the appellant. It is admitted that the appellant is a dealer in shares and that it had actually dealt with

the shares of Elphinstone Mills during its busi

We proceed to consider the next question, viz., whether the entire amount of Rs. 10,42,990 which the appellant received for its ordinary and preference shares represented exclusively the price of the shares or whether it constituted a composite payments for the price of the shares and certain other valuable rights. The case of the appellant is that the transaction entered into by Mulraj Kersondas with K. D. Jalan which involved the sale of Rs. 25,000 ordinary shares and 10,000 preference shares of the Elphinstone Mills was not merely a transaction for the sale of the shares. The offer which Mulraj Kersondas made on September 25, 1953, consisted of four items, viz., (1) the sale of 25,000 ordinary shares and 10,000 preference shares, (2) procuring the resignations of the present directors of the Elphinstone Mills (3) securing the appointment of person of the choice of K. D. Jalan as directors of the mills, and (4) obtaining the resignations of the present managing agents of the Elphinstone Mills. It was contended that over and above the market price was paid by him for the controlling interest which was being transferred along with the shares. In other words, the contention of the appellant was that the profit on the sale of the shares made by the appellant must be calculated on the basis of the entire consideration received by it which was a composite payment received for the upprice of the shares and for parting with the controlling interest. We are unable to accept this argument as correct. It may be that in the total disposal of the entire block of shares in favour of K. D. Jalan the latter may have acquired certain amount of controlling power apart from mere acquisition of shares. It is also conceivable that Mulraj Kersondas, in going through the transaction with K. D. Jalan, might have given to K. D. Jalan not only the shares but also certain other advantages. But the question must be examined from the view-point of the appellant and what we have to see is what the appellant parted with and what the appellant got

For the reasons expressed, we hold that the judgment of the High Court is right and this appeal must be dismissed with costs.

Appeal dismissed.

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