

Commissioner of Income-Tax, Central, Calcutta

Vs

Gold Mohore Investment Co. Ltd. [1969] 72 I. T. R. (Sh. N.) 15

Civil Appeals Nos. 1236 and 1237 of 1967

(CJI M. Hidayatullah, J. C. Shah, A. N. Grover, V. Ramaswami I, G. K. Mitter JJ)

03.04.1969

JUDGMENT

HIDAYATULLAH C.J. -

These are two appeals by the Commissioner of Income-tax, Central, Calcutta, against Messrs. Gold Mohore Investment Co. Ltd. and arise out of Income-tax Reference No. 65/54 decided by the Calcutta High Court on August 27, 1963. The Point involved in the appeals is the valuation of bonus shares in the assessment years ending March 31, 1950, and 1951, respectively. The previous years corresponding to the assessment years were the financial years ending 31st March, 1949, and 1950, respectively.

The assessee-company is a dealer in shares. Its method of valuation at the opening and closing of the stocks is to value shares at the cost in the assessment year 1949-50. The company held 2,500 shares of the face value of Rs. 10 each in the Howrah Mills Co. Ltd. They had been purchased at Rs. 85 per share and the total cost to the assessee-company was Rs. 2,12,500. In June, 1948, bonus shares were issued by the Howrah Mills Co. Ltd. in the proportion of three shares for every two original shares. The bonus shares were rank pari passu with the old shares. As a result, the assessee-company obtained 3,750 shares of the face value of Rs. 10 each. On August 2, 1948, the assessee-company sold the original shares for Rs. 72,087-8-0, i.e., at about Rs. 29 per share. On March 18, 1949, the assessee-company sold 3,750 shares for Rs. 95,250, that is to say, at Rs. 25 per share. The assessee-company computed a loss of Rs. 84,041-12-0. It calculated the loss in the following manner :

# "Dr. Sold Cr. O.S. 2500 Shares 2,12,500-0-0 2-8-48 (2500) sh. 72,087-8-0 (old) (old) 21-6-48 Cost of 1,379-4-0 18-3-49 (2750) sh. transfer (bonus) 70,125-0-0 of shares "(1000) sh. (bonus) 25,125-0-0 2-7-48 By crediting capital Loss to reserve a/c P & L a/c with the 6250 sh. 84,041-12-0 face value of bonus shares received free of cost (3750) 37,500-0-0 ----- 2,51,379-4-0 2,51,379-4-0" ----- ---  
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The bonus shares when they were issued were included in the trading account. According to the assessee-company the bonus shares had fetched as profit Rs. 95,250 less the face value of the shares, Rs. 37,500. This profit was set off against the loss on the original shares - Rs. 2,12,500 less Rs. 72,087-8-0 giving the overall loss of Rs. 84,041-12-0, as stated above.

The Income-tax Officer did not accept this mode of calculation. According to him the loss was Rs. 46,541-12-0 as follows :

# "Dr. Sold Cr. Rs. As. Rs.As.O.S. 2500 sh. (sold) 2,12,500-0-0 2-8-48 (2500) sh. 72,087-8-021-6-48 Cost of old transfer 1,379-4-0 18,3,49 (2750) 70,125-0-0 of shares bonus 2-7-48 (3700) sh. Nil ... (1000) 25,125-0-0 bonus (sc) bonus Loss to P & L a/c 46,541-12-0 ----- 2,13,879-4-0 2,13,879-4-0. -----  
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On appeal to the Tribunal as to which method was correct, the Tribunal accepted the method of valuation of the Income-tax Officer.

In the assessment year 1950-51, the account year being 1949-50, the assessee-company held 122 first preference shares of Fort Gloster Jute Company Ltd. which had cost to the assessee-company Rs. 22,893-12-0. In the year of account there was an issue of bonus shares (second preference) and the assessee-company received 137 shares of the face value of Rs. 100 each. The assessee-company sold 125 shares (second preference) for Rs. 14,500. It was, therefore, left with 122 shares (first preference) and 12 shares (second preference). The assessee-company returned a profit of Rs. 1,997 as follows :

# "Dr. Rs. As. Cr. Rs.As.O. S. (122) 1st Pref. 23,883-12-0 18-3-49 (125) 2nd 14,500-0-0 Pref. (137) 2nd Pref. 13,703-0-0 C. S. (122) Profit P & L 1st Pref. 23,883-12-0 a/c. 1,997-0-0----- (12) 2nd(259) Pref. 1,200-0-0 -----  
39,583-12-0 (259) 39,583-12-0" -----##

It will be seen that the cost of bonus shares was shown at the face value of the shares plus a minor charge of Rs. 3. Rs. 13,703 were credited to capital reserve. The Income-tax Officer spread out the cost of 122 1st preference shares (Rs. 23,883-12-0) over the 122 (first preference) and 137 shares (second preference). He worked out the average cost at Rs. 92-3-6 per share and found the profit to be Rs. 2,973. His method of calculation was as follows :

# "Dr. Sold Cr.O. S. 122 1st Pref. 23,833-12-0 14-4-49 125 Pref 14,503-0-0 137 2nd Pref. C. S. 122 free of Nil 1st Pref. cost 12 2nd Pref. -92/3/6 12,357-5-0 Profit to P & La/c 2,973-9-0 ----- (259) 26,857-5-0 (259) 26,857-5-0 -  
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The Tribunal confirmed the assessment as made by the Income-tax Officer. It may be pointed out that the Appellate Assistant Commissioner had in each case confirmed the order of the Income-tax Officer.

The Income-tax Appellate Tribunal then made a reference to the High Court and referred the following question for the determination of the High Court :

1949-50 :

"Whether in the facts and circumstances herein stated, the assessee carrying on share dealing business, can add Rs. 37,500 being the face value of bonus shares issued to it free of cost on the basis of its old shareholding, as cost of its shareholder for the purpose of determining loss in dealing in Howrah Mills Co. Ltd. shares ?"

1950-51 :

"Whether, in the facts and circumstances herein stated, the assessee carrying on share

dealing business, can add Rs. 13,700 being the face value of bonus shares issued to it free of cost on the basis of its old shareholdings, as cost of its shareholding for the purposes of determining profits in dealing in Fort Gloster Jute Co. shares ?"

The High Court, by its judgment dated August 27, 1963, following its decision in Income-tax Reference No. 54/1960 (from which Civil Appeal No. 1239 of 1967 is also being decided today) held in favour of the assessee-company. The High Court purported to follow a decision of the Patna High Court in *Dalmia Investment Co. Ltd. v. Commissioner of Income-tax*.

Mr. Sen, in dealing with these appeals, points out that the decision of the Patna High Court in *Dalmia Investment Co. Ltd. v. Commissioner of Income-tax* was reversed by this Court in *Commissioner of Income-tax v. Dalmia Investment Co. Ltd.* and the decision of this court has further been followed in *Commissioner of Income-tax v. Gold Mohore Investment Co. Ltd.* He contends that the method adopted by the Income-tax Officer in relation to the Fort Gloster jute shares is the method approved of by this court, namely, that where the shares are *pari passu* and valuation is to be made at cost, the price of the original shares must be spread over the old and the new shares and they must be held to have been purchased at the average cost and that the profit or loss is to be calculated accordingly. In the decision of this court in *Dalmia Investment Co. Ltd.*, four methods of calculation were considered. The first method is to take the cost as equivalent to the face value of the bonus shares. This method was followed by th

These case would normally have been decided on the strength of the ruling of this court but a doubt arose because in an earlier decision in *Emerald and Co. Ltd. v. Commissioner of Income-tax*, this court seemed to have approved of another method. In that case the bonus shares were not sold. In applying different methods, the difference was only Rs. 18 and the court did not, therefore, express a final view on the matter and accepted the calculation of the Tribunal which was to ignore the bonus shares which were not sold and to calculate the profits and loss on the basis of the original shares, their cost and sale prices. The court observed as follows :

"The bonus shares are still there, and have not been sold. When they are sold, the question will arise as to what they cost. The books of the assessee-company, as stated in the statement of the case, include the closing stock at cost price. In calculating profit and loss in the manner done by the Tribunal, there is no departure from this system. All the ordinary shares which were bought were sold. Their purchases price is known, as also their sale price. The first assessment is closed, so far as the assessee-company is concerned."

In other words, this court did not go into the question of the valuation of the bonus shares at all but decided the case on the basis of the original holding, its cost price and its sale price. The matter was gone into more closely in the *Dalmia's* case and every method of calculation was considered there. We were invited to depart from the decision in the *Dalmia's* case and to take the view which appeared to have been taken in the *Emerald's* case We have considered the matter once again and are of opinion that the method followed in the *Dalmia's* case is the correct method and there seems to be some error in stating that the method of the Tribunal in *Emerald's* case was finally accepted. Perhaps the court intended saying that the name of the Income-tax Officer was preferable but by error put down the method of the Income-tax Appellate Tribunal. In any case that case did not decide the matter fully because, as the court itself observed, the difference in the two methods only resulted in Rs. 18 being either added

We accordingly accept the third method. The answers recorded by the High Court are discharged and we answer the question in the negative. The case will be disposed of in the light of our observations by the Income-tax Appellate Tribunal by calculating the profit and loss by spreading the cost over the original and the bonus shares and finding out the average cost per share. The appeals are allowed with costs.

Appeals allowed.

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