

M/s. Investment Ltd.

Vs

The Commissioner of Income-Tax, Calcutta

Civil Appeal No. 513 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

21.04.1970

JUDGMENT

SHAH, J. -

1. The appellant is a public limited company incorporated in 1948 under the Indian Companies Act, 1913. At the commencement of the year of account 1952-53, the company held Government securities of the value of Rs. 1,93,30,958 and shares of public limited companies of the value of Rs. 64,54,529. During the course of the year the company sold Government securities valued at Rs. 92,50,000 and realised a sum of Rs. 79,78,055.50. The company also purchased Government securities of the value of Rs. 1,00,00,000 and out of those sold securities of the value of Rs. 69,00,000 earning a profit of Rs. 21,024.

2. In proceedings for assessment of income-tax for the assessment year 1953-54, the company claimed allowance for the loss suffered in the sale of the securities. The claim was disallowed by the Income-tax Officer. He held that "it was no part of the business of the company to deal in securities", that the transaction in securities did "not appear to be a normal business venture of the company", and that the memorandum and articles of association of the company prohibited transactions of sale of securities and on that account the loss was of a casual nature. The Appellate Assistant Commissioner agreed with the Income-tax Officer on the following grounds :

"(i) Since its inception in 1948 in the course of seven years, sales of securities have been effected only in the accounting year 1952-53.

(ii) In other years there have been redemption of securities but no sale which shows that the appellant was an investor and not a dealer in securities.

(iii) In the balance-sheets the securities are shown as "investments". They are not valued at market-value although the market-value was less.

(iv) There is no frequency of transactions nor can it be said that there was a scheme of profit-making."

3. The Income-tax Appellate Tribunal held that the securities were not held as stock-in-trade of the company's business, and dismissed the appeal filed by the company. At the instance of the company, the following question was referred by the Tribunal to the High Court of Madhya Pradesh :

The High Court recorded their answer in the affirmative.

4. The Tribunal held that the loss suffered by the sale of securities was of capital nature. That finding is not one of the fact. This Court has held in Commissioner of Income-tax, Delhi and Rajasthan v. National Finance Ltd., (1962) 44 ITR 788 = AIR 1963 SC 835 :

"..... whether a particular loss is a trading loss or a loss on the capital side, depends on the facts of each case. The question, however, is not one of pure fact but a mixed question of fact and law; and the decided cases indicate how the matter is to be viewed in the context of the facts. The problem must be approached in such cases 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."

As observed in Paragraph 2 of the statement of case submitted by the Tribunal, the company was incorporated with the objects, amongst others, "to invest and deal with the moneys of the company, and in particular to subscribe for or otherwise to acquire and to hold and deal with the perpetual or redeemable debentures or debenture-stock or obligation or the shares, fully or partly paid, or stock of the company in India or elsewhere". The transaction in securities were within the competence of the company. In computing the taxable income of the company in assessment years 1952-53, 1954-55 and 1955-56, the Income-tax Officer held that the shares and securities were the stock-in-trade of the company, and the loss suffered in transactions relating thereto was a permissible allowance. It is true that an order made in assessing the income of one year regarding the nature of a transaction or the income received therefrom is not conclusive in another year. But that finding is good and cogent evidence of the nature of the transactions in shares and securities in the year of account 1953-54 and of the receipts therefrom. In the year of assessment 1952-53, the company received (income-Ed.) from interest on securities, dividends from shares, interest on advances and income from building used as cinematograph theatre and suffered a loss in transactions of securities. In that year the company was allowed a loss of Rs. 63,938 resulting from "redemption of securities". In the assessment year 1954-55 the company was allowed a loss of Rs. 26,078 resulting from "redemption of securities". In the assessment year 1955-56, the company was allowed a loss of Rs. 2,675 resulting from sale of shares.

5. In the assessment year 1953-54, the company had no taxable income from the cinematograph theatre, because against the receipts were set off the depreciation and repair charges and the entire receipts of the company were from interest and dividends. The loss which the company suffered in the account year 1952-53 relevant to the assessment year 1953-54 arose from transactions relating to sale of 3 per cent. 1970-75 loan. The company purchased securities of the face value of Rs. 92,50,000 in two lots between July 28, 1948 and March, 1949, of Rs. 93,18,625. These securities were sold between September 2, 1952 and February 9, 1953, through the United Commercial Bank at rates varying between Rs. 88-6-0 and Rs. 85-15-0 in 19 different lots. The company also purchased in the year of account 1952-53 securities worth Rs. 1,00,00,000 and sold out of these, securities of the face value of Rs. 69,00,000 in that year. The profit earned was not brought into the accounts on the plea that the entire lot was not sold. The statement of account filed by the company also shows that there were transaction of sale and purchase of securities in the years after the years of account 1952-53.

6. On the facts found it is clear that the company was formed with the objects, amongst others, of dealings in shares, debentures and securities and it effected transactions of sale and purchase of shares and securities of large magnitude. In computing the income of the company, the Income-tax Officer accepted the claims of the company in assessment years 1952-53, 1954-55 and 1955-56, that the shares and securities held by the company were its stock-in-trade and the loss resulting from

transaction relating thereto was revenue loss. Prima facie, these facts lead to an inference that the company was a dealer in shares and securities and the loss resulting in the year of account of 1952-53 from sale of securities was liable to be treated in the assessment year 1953-54 as revenue loss. But the High Court held that the loss was capital, replying mainly upon certain findings recorded by the Appellate Assistant Commissioner and confirmed by the Appellate Tribunal.

7. It is true that the company commenced business in 1948 and purchased 3 per cent. 1975 loan of the value of Rs. 92,50,000 between July, 1948 and March, 1949. The company purchased other Government securities and stocks and shares of public limited companies. Some of the securities were redeemed in 1951-52. In 1952-53, the company sold securities of the value of Rs. 92,50,000 and securities of the face value of Rs. 1,00,00,000 were purchased. No investigation was made by the Income-tax Officer whether the redemption of securities in 1951-52 was maturity or for other reasons. Nor did he investigate the reason which persuaded the company to sell securities of a very large value at a loss, and to purchase securities in the course of the same year of the face value of a crore of rupees. From the circumstance that the company did not effect any transaction of sale or redemption of securities between 1948 and 1951, no inference may arise. There is no evidence on the record as to the true nature of what is called by taxing authorities - "redemption of securities". In the statement of account that are referred to as "1951-54 3 per cent. loan" of the value of Rs. 23,50,000. Even assuming that the company redeemed the securities on maturity, no inference that the company was an investor and not a dealer arises solely from that fact. The loss of Rs. 63,938, it may be recalled, was allowed in the assessment year 1952-53 by the Income-tax Officer on the footing that the securities and shares were stock-in-trade, and even in the assessment years 1954-55 securities and shares were stock-in-trade, and even in the assessment years 1954-55 and 1955-56 the losses in transaction of securities and shares were accepted as revenue losses.

8. In the balance-sheet, it is true, the securities and shares are valued at cost, but no firm conclusion can be drawn from the method of keeping accounts. A tax-payer is free to employ, for the purpose of his trade, his own method of keeping accounts; and for that purpose to value his stock-in-trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the departmental authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of accounting regularly employed may be discarded only if in the opinion of the taxing authorities income of the trade cannot be properly deduced therefrom. Valuation of stock at cost is one of the recognised methods. No inference may therefore arise from the employment by the company of the method of valuing stock at cost, that the stock-in-trade. Nor is the description of stock in the balance-sheet as "investments" decisive. The transactions in securities and shares, it is true, were not frequent, but they were of very large amounts. In the year of account 1952-53, the transactions of sale and purchase of securities were in number substantial and in value considerable.

9. It is true that the profit earned by sale of securities of the value of Rs. 69,00,000 in 1952-53 was not brought into account. But the profit was withheld on the plea that "the transaction was not complete". Whether the plea was in law justified is irrelevant in determining the nature of the transactions. The Income-tax Officer accepted the plea and did not bring to tax the profit resulting from that transaction in computing the income for the assessment year 1953-54.

10. On a careful consideration of the circumstances relied upon by the Tribunal we are unable to hold that they outweigh the inference arising from the nature of the transactions disclosed by other circumstances.

11. The Solicitor-General appearing for the Revenue contended that the transactions which resulted in loss in the account year 1952-53 were of the nature of "redemption of securities" and loss suffered as a result of redemption cannot be allowed in the computation of income. There is no evidence in support of this contention. The securities were 3 per cent. 1975 Loan and they were sold in 1952-53. In the account submitted by the company they are referred to as transactions of sale, and in the reference made by the Tribunal they as also referred to as sale.

12. We are unable to agree with the answer recorded by the High Court. We answer the question in the negative.

13. The appeal is allowed. The company will be entitled to its costs in this Court and the High Court.

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