

Shapurji Broacha Mills Ltd.

Vs

C. I. T., Bombay

Civil Appeal No. 2185 of 1966

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

29.04.1970

JUDGMENT

SHAH, J. -

1. The facts of this case bear an uncanny parallel with the facts which gave rise to Civil Appeal No. 2184 of 1966 = (reported in AIR 1970 SC 1811), Madhowji Dharamshi Mfg. Co. Ltd. v. Commissioner of Income-tax, Bombay. Shapurji Broacha Mills Ltd. - hereinafter called 'the assessee' - was another flourishing concern. Till October 7, 1946, the assessee was managed by the Provident Investment Co. Ltd. The shares of the assessee were taken over by the Dalmia Investment Company Ltd. By agreement, dated October 29, 1948, the assessee appointed the D.C.P.M. as their selling agents for a period of 10 years with effect from November 1, 1948. The assessee also appointed Bharat Union Agencies Ltd. as their managing agents for 20 years from July 1, 1950. The resolutions passed and the appointments made for the managing agent and selling agents are in terms identical with appointments made for the Madhowji Dharamshi Mfg. Company Ltd. The purchasers of the assessee in this case are also M/s. Ram Sahai Mal More Ltd.

2. The claim made by the assessee for allowance of the amounts alleged to have been paid to the D.C.P.M. and Bharat Union Agencies Ltd. as compensation for breach of the agreements of the selling agency and the managing agency in the year of assessment for 1951-52 was disallowed by the Income-tax Officer. That order was confirmed by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. An application under Section 66(1) for raising questions of law and for submitting a statement of the case was rejected by the Tribunal, and the High Court of Bombay declined to call for a statement of the case.

3. The facts in this case leave no room for doubt that the agreements and resolutions passed by the assessee were all designed to secure one purpose - to extract out of the assets of the assessee large sums of money by persons controlling the assessee as well as the managing agency and selling agency, free of income-tax, and that the agreements and resolutions were "sham and colourable" transactions. The High Court was right in refusing to call for a statement of the case.

4. The appeal fails and is dismissed with costs.

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