

# SUPREME COURT OF INDIA

Commissioner of Income-Tax,

Vs.

Ashoka Marketing Co.

(A Grover and K Hegde JJ.)

26.07.1971

## JUDGMENT

**K.S. HEGDE, J.**

1. These appeals are connected with Civil Appeals Nos. 1813, 1848 and 1849/67 which we disposed of on July 23, 1971. All these appeals were dealt with by a common judgment by the High Court, in references Under Section 66(1) of the Indian Income Tax Act, 1922. The question arising for decision in these appeals is whether some of the losses incurred by the assessee are trading losses or not. The Tribunal has answered that question in favour of the assessee and the finding of the Tribunal has been accepted by the High Court.

2. The assessee is a Limited Company acting as Selling Agents of various companies and also carrying on business in shares in Jute as also in speculation. The assessment years with which we are concerned in these appeals are 1952-1953 and 1953-54. For the year 1952-53, the assessee returned a total income of Rs. 1,78,508/-and for the year 1953-54, it returned an income of Rs. 1,08,573/-. In respect of the first year, the assessee claimed a loss of Rs. 19,42,243/-and in respect of the second year a loss of Rs. 10,40,409/-in respect of sale of certain shares. (These figures are taken from the printed statement of case, but their correctness is disputed, It is not necessary to go into the correctness of these figures). The loss in respect of the first year pertains to dealings in shares of New Central Jute Mills and Lothian Jute Mills and the loss claimed in respect of the second year pertains to purchase and sale of shares of the Punjab National Bank Ltd. and of the New Central Jute Mills Ltd. and Lothian Jute Mills Ltd. and certain other shares. It is admitted that the assessee company is dealing in shares. It is also not disputed that the assessee did incur the losses mentioned earlier. But according to the Revenue, those losses cannot be considered as a trading losses as the shares were purchased at a very high rate, so that Mr. S.P. Jain may control some of the companies. In other words the contention of the Revenue was that the dealings with which we are concerned in

these cases are really not business dealing'. This contention was rejected by the Tribunal. After examining the facts of the case, the Tribunal came to the conclusion that the shares in question were purchased in the course of business and that they could not have been purchased so as to enable Mr. Jain to control the management of certain companies. The assessee purchased these shares from Mr. Jain. Therefore the question of purchasing these shares, so that Mr. S.P. Jain may control certain concerns, is a misconception. The conclusion reached by the Tribunal was accepted by the High Court. The High Court has elaborately considered the evidence on record and has come to the conclusion that the dealings with which we are concerned in these cases are business dealings and the losses were incurred in the course of business. These are essentially findings of facts. As mentioned earlier in our judgment in Civil Appeals Nos. 1813, 1848 and 1849/67 that the finding of the Tribunal that the loss incurred is a trading loss is primarily a finding of fact, though in reaching that finding the Tribunal had to apply the test laid down by this Court in several decisions. The Tribunal has carefully considered the evidence on record and after applying the tests laid down, has come to the conclusion, as mentioned earlier that the losses in question are trading losses and its conclusion have been accepted by the High Court. It is not the case of the Revenue that in arriving at its findings the tribunal had either ignored the relevant considerations or taken into consideration irrelevant matters.

In the result, these appeals are dismissed. No costs.