

Karam Chand Thapar and Bros. P. Ltd.

Vs

Commissioner of Income-Tax (Central), Calcutta

Civil Appeals Nos. 1747 of 1968 and 1126 of 1971

(K. S. Hegde JJ)

26.08.1971

JUDGMENT

HEGDE J. -

Civil Appeal No. 1126 of 1971 by special leave arises from the decision of the High Court of Calcutta in a reference under section 66 (1) of the Indian Income-tax Act, 1922 - hereinafter referred to as "the Act". The assessment year with which we are concerned in this appeal is 1955-56, the previous year ending on March 31, 1955.

The facts as found by the Tribunal are as follows :

During the relevant previous year the assessee sold 2,500 shares of M/s. Karam Chand Thapar & Sons Ltd. which had been purchased by them in three lots : 1,100 shares on 20th May, 1941, 1,300 shares on 17th September, 1941, and 100 on 31st March, 1950. The total price paid for those shares was Rs. 2,54,592. The entire block of the said shares was sold to M/s. Mugneeram Bangur & Co. on March 4, 1945, for a sum of Rs. 1,50,000. The assessee thereby suffered a loss of Rs. 1,04,592. It claimed that the loss was a trading loss. The Income-tax Officer did not accept the assessee's claim. He opined that the transaction in question was not a genuine transaction and further even if it is a genuine transaction the loss incurred is a capital loss. In appeal the Appellate Assistant Commissioner did not agree with all the findings reached by the Income-tax Officer. He came to the conclusion that the sale transaction was genuine but the loss incurred was a capital loss. On a further appeal the Tribunal agreed with the Appellate Assistant Commissioner's conclusion that the loss in question was a capital loss. Hence, it did not go into the question whether the transaction was a genuine one. It assumed that it was genuine. It found the following facts :

- (1) 2,400 shares were purchased in the year 1941;
- (2) They were the shares of a company managed by the assessee.
- (3) All these shares were sold on March 4, 1955;
- (4) These shares were shown in the account books of the assessee as investment shares;

- (5) They were also shown in the balance-sheet as investments; and
- (6) They were not sold when the prices of those shares were high.

On the basis of these findings it reached the conclusion that the loss incurred is a capital loss as those shares were purchased as investment shares.

Whether a particular loss is a capital loss or a revenue loss is a mixed question of law and fact. It is difficult to lay down cut and dried principles for deciding that question. It depends upon the facts and circumstances of each case. Generally speaking, the decision on that question depends on the inference to be drawn from the facts found by the Tribunal. All that we have to see is whether the inference drawn by the Tribunal on the facts found by it is a reasonable inference.

As seen earlier, one of the circumstances on which the Tribunal mainly relied is that those shares were purchased in the year 1941 but they were sold only in the year 1955. The Tribunal has also noted that, though at some stages these shares could have been sold at a much higher price than for which they were sold, the assessee did not choose to sell those shares.

Locking up of shares for about 14 years must be held to be an unusual feature if those shares were the trading assets of the assessee. That circumstance is more consistent with the fact that those shares were investment shares. No explanation was offered for not dealing with those shares for about 14 years. It is least likely that a trader would retain his shares purchased by him in 1941 till 1955 though he had occasions to sell the same at a higher price earlier. It may be noted that, though, according to the assessee, the price of those shares was Rs. 50 per share in the year 1950, yet the assessee purchased 100 shares in 1950 at Rs. 75 per share. This is again indication that the assessee was not acquiring those shares as a trading activity. We fail to see why the shares of M/s. Karam Chand Thapar and Sons should have gone down in value in the years 1952-53, 1953-54 and 1954-55 when that company was making substantial profits. This circumstance remains unexplained. The Tribunal also relied on the circumstance that the assessee was showing these shares as investment shares in its books as well as in the balance-sheet. It is true that that circumstance by itself is not a conclusive circumstance. It cannot be denied that that is relevant circumstance on which the Tribunal could have relied for drawing the inference it did. The explanation that it had to do so because of the provisions of company law is unfounded.

In our opinion, on the facts found by it, the Tribunal was justified in drawing the inference that the loss in question was a capital loss. That is also the view taken by the High Court.

In the result, Civil Appeal No. 1126 of 1971 is dismissed with costs. Now, coming to Civil Appeal No. 1747 of 1968, we revoke the certificate granted by the High Court as it is not supported by any reason. There is no need to send the case back to the High Court in view of our decision in Civil Appeal No. 1126 of 1971, in which we dealt with that very case. Hence, that appeal is also dismissed. No costs.

Appeals dismissed.

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