

Commissioner of Income-Tax (Central), Calcutta

Vs

Associated Industrial Development Co. (P.) Ltd.

Civil Appeal No. 1929 of 1968

(K.S. Hegde, A.N. Grover JJ)

07.09.1971

JUDGMENT

GROVER J. -

This is an appeal by special leave from a judgment of the Calcutta High Court in an income-tax reference.

The assessee is a private limited company. It acts as managing agents of various companies including National Pipes and Tubes Co. Ltd. Indian Conduit Pipes Ltd. and National Rolling and Steel Ropes Ltd. During the assessment year 1957-58, the accounting year being the financial year ending March 31, 1957, the assessee sold 20,000 shares of the first company, 14,150 of the second company and 10 preference shares of the third company. The sale of the shares of the first company resulted in a profit of Rs. 1,29,401 whereas the sale of the shares of the other two companies led to a loss of Rs. 3,374. Thus, there was a net profit of Rs. 1,26,027 from the sale of shares of all the three companies. The total number of shares of shares in the first company acquired by the assessee during the year 1943 to 1953 aggregated to 60,700 shares. Out of this holding 10,700 share were sold in 1955 and 20,000 shares were sold during the year ending March 31, 1957. The profit that arose to the assessee not resale of 10,700 shares in 1955 was to subject to tax as the income-tax authorities held that the assessee was not a dealer in shares. As a matter of fact, the assessee had never been treated as a dealer in shares in any of the past assessment and its holding in the various companies were deposited with that bank. The Income-tax Officer, however held that the profit was taxable as the assessee was entitled under its memorandum of association to deal in shares. The Appellate Assistant Commissioner was of the view that the profit resulting from the sale proceeds was revenue receipts showed that the assessee had been regularly purchasing and selling shares mostly of those companies of which it or its associated concerns were the managing agents. When the appeals was taken to the Tribunal it was pointed out by the departmental representative that the profit from the sale of shares in question had been credited to the profit and loss account. There was difference of opinion Between the Judicial Member and the Accountant Member of the Tribunal. The Judicial Member held that the assessee was trading in shares whereas the Accountant Member took the contrary view and held that the department had failed to bring on record any evidence to show that the purchase of shares in managed companies had been made with an intention of selling them at a profit. Ultimately, the case was referred to the President of the Tribunal under section 5A(7) of the Income-tax Act, 1922. The question which was referred to him was whether the assessee was or was not a dealer in shares during the relevant accounting period. The President of the Tribunal agreed with the Judicial Member that the assessee was a dealer in shares which were confined to the shares of the managed companies. Ultimately, on the Tribunal being moved, the following question of law was referred to the High Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the profit of Rs. 1,26,027 arose to the assessee in the course of its business as a dealer in shares and as such was liable to be assessed as a revenue profit?"

The High Court upheld the majority view of the Tribunal that the assessee was a dealer in shares. It, however, proceeded to consider the question from an entirely new angle. Its approach was like this. The facts that part of the shares were subscribed for the purpose of acquiring the managing agency of the National Pipe and Tubes Co. and that subsequently large blocks of shares were purchased and held for long period without sale and further that the shares were sold not in small blocks but in big blocks to reduce the assessee's liability to the Central Bank of India in its overdraft account showed that these shares were held by the assessee as a part of its investment. It, therefore, proceeded to hold that the profit of Rs. 1,26,027 did not arise to the assessee in the course of its business as a dealer in shares. It was thus found to be a capital and not a revenue receipt. The question was answered in favour of the assessee.

It seems to us that the High Court went beyond the matters which were the subject-matter of controversy before the departmental authorities and the Appellate Tribunal. It was never the case of the assessee at any stage that although it was a dealer in shares those shares which were the subject-matter of sale were held by way of investment. It had maintained throughout that all the shares were held by it as an investor and that it could not be regarded as a dealer because the shares did not form its stock-in-trade. That case of the assessee was negatived because of the extensive dealings and other facts and circumstances which were taken into consideration. The figure of purchases and sales as also of the profits relating to the years 1954 to 1957 which were set out in the order of the President to the Tribunal justified the view that although up to a certain point of time it had been assessed as an investor, the multiplicity of the transactions occurring successively over the years supported the departmental stand that the assessee had ceased to be an investor and had become a dealer. Before the Tribunal it was open to the assessee to contend that even on the assumption that it had become a dealer it was no longer an investor in shares the particular holding which had been cleared and the sales of which had resulted in the profit in question had always been treated by it as an investment. It can hardly be disputed that there was no bar to a dealer investing in shares. But then the matter does not rest purely on the technical question of onus which undoubtedly is initially on the revenue to prove that a particular item of receipt is taxable. Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it could, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment. The assessee, in the present case, made no attempt whatsoever to make out a case that the shares which had been sold were a part of its capital investment. Nor did it place any material from which it could be established that those shares had been treated in its books differently from other shares held by the assessee were being credited as and when the sale were made and that these shares and not been sold with any amount of frequency could not be regarded as sufficient to establish that these shares had been held by way of investment. Even otherwise it was for the Appellate Tribunal to give its decision on facts and since no decision was invited from the Tribunal as to whether the shares in question had been held by way of investment it was open to the High Court to give its finding of that question which was essentially one of fact and which it was within the jurisdiction of the Tribunal to determine.

In the result the appeal succeeds and is allowed with costs. Instead of the answer returned by the

High Court the question is answered in favour of the revenue and against the assessee.

Appeal allowed.

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