

Nirmal Trading Co.

Vs

Commissioner of Income Tax (Central), Calcutta

Civil Appeal No. 2318(NT) of 1972

(N.L. Untwalia, R.S. Pathak JJ)

10.10.1979

JUDGMENT

PATHAK, J. –

1. This appeal by certificate under Section 66-A(2) of the Indian Income Tax Act, 1922 relates to the application of Explanation 2 to Section 24(1) of the Indian Income Tax Act.

2. The assessee deals in paper, hessian and B. Twill. After assessment by the Income Tax Officer for the assessment year 1955-56, and thereafter an appeal disposed of by the Appellate Assistant Commissioner, the Income-tax Appellate Tribunal in second appeal found that certain transactions entered into by the assessee could not be described as "speculative transactions" within the meaning of Explanation 2 to Section 24(1) of the Indian Income Tax Act, 1922 and allowing the appeal it directed that the loss suffered by the assessee should be set off under Section 24(1) of the Act. At the instance of the Revenue, the Appellate Tribunal referred the following question to the High Court at Calcutta for its opinion :

Whether, on the facts and in the circumstances of the case, the loss of Rs. 1,03,688 was the result of speculative transactions within the meaning of Explanation 2 to section 24(1) of the Indian Income Tax Act, 1922, and therefore, was not allowable to be set off under section 24(1) of the said Act ?

The High Court has answered the question in favour of the Revenue.

3. It appears the assessee entered into several transactions of sale and purchase with different parties, and the transactions were settled by handing over delivery orders. There is no evidence that actual delivery of the goods was ever effected either to the assessee or to subsequent purchasers from him. All that passed were the delivery orders and payment by cheque. The High Court has taken the view that in the absence of actual delivery the transactions attracted Explanation 2 to Section 24(1) and must be regarded as "speculative transactions". It seems to us that the High Court is right, having regard to the law laid down by this Court in *Davenport & Co. P. Ltd. v. CIT* ((1975) 100 ITR 715 : (1975) 2 scc 399 : 1975 scc (TAX) 362).

4. It is urged on behalf of the assessee that the case falls under *Raghunath Prasad Poddar v. CIT* ((1973) 90 ITR 140 : (1974) 3 SCC 205 : 1973 SCC (Tax) 499). But that decision has been overruled by this Court in *Davenport & Co. P. Ltd* ((1975) 100 ITR 715 : (1975) 2 SCC 399 : 1975 SCC (Tax) 362), and in any event no question of invoking that decision arises because in the present case there has never been any suggestion that actual delivery of goods was ultimately

effected. The case of the assessee through out has been that handing over of the delivery orders was sufficient as constituting actual delivery of the goods.

5. In the result, the appeal fails and is dismissed with costs.

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