

M/S. Jute Investment Company Ltd.

Vs

Commissioner of Income Tax, West Bengal Calcutta

Civil Appeal No. 2259(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, raises the question whether the transactions in which the assessee was engaged were "speculative transactions" as defined by Explanation 2 to Section 24(1) of that Act.
2. The assessee carries on business in gunnies. The total purchase disclosed by the assessee for the year ended June 30, 1960 amounted to Rs. 1,01,51,225 and the total sales during that year were shown at Rs. 1,03,27,208. The purchases and sales included certain transactions with Messrs. Kesardeo Shyamsunder. Under contract Nos. 96 dated November 11, 1959, 108 dated November 12, 1959, 643 dated April 27, 1960 and 836 dated May 25, 1960, the assessee claimed that 5700 bales of gunny bags were purchased for Rs. 22,05,000. The assessee says that he sold them to the same party under contract Nos. 520 dated March 30, 1960, 540 & 541 dated April 1, 1960 and 610 dated April 19, 1960 for Rs. 19,79,550. The result was a loss of Rs. 2,25,450. The contracts were transferable specific delivery contracts falling within the scope of the bye-laws of the East India Jute & Hessian Exchange Ltd., the bye-laws having been passed with the concurrence of the Forward Market Commission. Admittedly, in the aforementioned transactions of purchase and sale there was no physical delivery of goods. There was a transfer delivery orders only.
3. In the income tax assessment for the assessment year 1961-62, the relevant previous year being the year ended June 30, 1960, the assessee showed the loss of Rs. 2,25,450 as an ordinary business loss. The Income Tax Officer rejected the claim and held that the transaction in which delivery orders were handed over without physical delivery of the goods were "speculative transactions" within the meaning of Explanation 2 to Section 24(1) of the Indian Income Tax Act. He observed that the loss of Rs. 2,25,450, being a loss in speculation business, would be treated separately. The assessee appealed, and the Appellate Assistance Commissioner took the view that as "pucca" delivery orders had been transferred, there was a transfer of documents of title to the goods and, therefore, actual delivery of the goods must be deemed to have been given. On appeal by the Revenue, the Income-tax Appellate Tribunal found that the only transaction which had suffered a loss was the transaction under contract No. 520 which was closed by the reverse purchase contract No. 836. The loss suffered was Rs. 2,99,700, but the claim made by the assessee quantified the loss at Rs. 2,25,450. In respect of that transaction the Appellate Tribunal observed that on purchase when the assessee was deemed to have received delivery the full amount was paid by cheque, and similarly when the assessee "sold forward" the full sum was also paid through cheque. It referred to the trade usage that cheques were paid when bills were received and on payment thereof the pucca

delivery orders changed hands. Therefore, said the Tribunal, in form it was a transaction of delivery for cash, and was not a speculative transaction.

4. At the instance of the Revenue, the Appellate Tribunal referred the following question to the High Court at Calcutta :

Whether, on the facts and in the circumstances of the case, the loss of Rs. 2,25,450 was a loss in speculative transaction within the meaning of Explanation 2 to Section 24(1) of the Indian Income Tax Act, 1922 ?

The reference was answered by the High Court in favour of the Revenue.

5. In this appeal, it is contended on behalf of the assessee that the High Court erred in holding that in order to take a transaction out of the definition of "speculative transaction" in Explanation 2 to Section 24(1) of the Indian Income Tax Act 1922, there must be actual delivery of the commodity itself and that delivery of pucca delivery orders without anything more did not constitute "actual delivery" within the meaning of that provision. It is urged that the giving and taking of pucca delivery orders amounts to actual delivery of goods. Pucca delivery orders, it is stated, are documents of title to goods. In our opinion, the contention cannot be accepted. Explanation 2 to Section 24(1) defines a speculative transaction as "a transaction in which a contract for purchase and sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips". It is apparent that what is contemplated is a real or factual delivery or transfer, and not a notional delivery or transfer.

6. The Calcutta High Court, in a series of decisions including *Wadhwana (D.M.) v. CIT* ((1966) 63 ITR 154 (Cal HC)), *Budge Budge Investment Co. Ltd. v. CIT* ((1969) 73 ITR 772 (Cal HC)), *Nanalal M. Varma & Co. (P) Ltd. v. CIT* ((1969) 73 ITR 713 (Cal HC)) and *Murlidhar Jhunjhunwalla v. CIT* ((1969) 73 ITR 727 (Cal HC)), held that unless the transaction was settled by actual delivery or transfer of the commodity it would be a speculative transaction by reason of Explanation 2 to Section 24(1). Subsequently, in *Raghunath Prasad Poddar v. CIT* ((1973) 90 ITR 140 : (1974) 3 SCC 205 : 1973 SCC (Tax) 499), the Supreme Court took a more liberal view and laid down that if the original transaction of sale and purchase of goods was followed by one or more subsequent contracts in respect of the same goods the original transaction would not be a speculative transaction if actual delivery of the goods sold was effected to the ultimate purchaser of the pucca delivery orders. The restricted view taken by the Calcutta High Court in *Nanalal M. Varma & Co. (P) Ltd* ((1969) 73 ITR 713 (Cal HC)) was disapproved. But recently a larger Bench of this Court in *Davenport & Co. P. Ltd. v. CIT* ((1975) 100 ITR 715 : (1975) 2 SCC 399 : 1975 SCC (Tax) 362) has overruled *Raghunath Prasad Poddar* ((1973) 90 ITR 140 : (1974) 3 SCC 205 : 1973 SCC (Tax) 499) and preferred the strict view adopted by the Calcutta High Court. The case before us, however, is a simple one. The transactions took place between the assessee and M/s. Kesardeo Shyamsunder alone. It is not disputed that there was no actual delivery or transfer of the gunny bags. The contracts were settled between the parties by transfer of pucca delivery orders.

7. Accordingly, we hold that the High Court was right in answering the question in favour of the Revenue and against the assessee.

8. The appeal is dismissed with costs.

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