

Commissioner of Income-Tax, Calcutta

Vs

Karam Chand Thapar and Bros. P. Ltd.

Civil Appeal No. 1119 of 1975

(L. M. Sharma, K. N. Saikia JJ)

14.02.1989

JUDGMENT

KANIA J. –

1. This is an appeal filed by the Commissioner of Income-tax, Calcutta, by special leave against an order of a Division Bench of the Calcutta High Court declining to direct the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") to refer to the court for determination of certain questions raised by the Commissioner of Income-tax.

It is necessary to set out a few facts for an appreciation of the controversy in this appeal. In its assessment for the assessment year 1959-60, the respondent-assessee claimed deductions, inter alia, in respect of the loss on the sale of certain shares of Bharat and Chemicals Ltd. and Greaves Cotton and Co. Ltd. for the relevant previous year. The respondent-assessee had sold in the relevant previous year 25,000 shares of Bharat Starch and Chemicals Ltd. to K. C. Thapar and Sons Ltd., a company belonging to the same group. These shares were purchased on February 22, 1958, and were sold on March 31, 1959. The loss claimed was of Rs. 26,465. The Income-tax Officer concerned disallowed this loss on the ground that the sale price was shown at Rs. 2.50 per share whereas the market quotation on March 31, 1959, was Rs. 8.06 per share. The Income-tax Officer also relied upon the circumstance that the shares had been sold to a company which was an allied concern of the assessee, that is, belonging to the Thapar group. The Income-tax Officer took the view that the sale had been effected only to enable the assessee to claim the loss and could not be allowed as genuine. The respondent-assessee had also sold 3,000 shares of Greaves Cotton and Co. Ltd. on February 4, 1959, to K. C. Thapar and Sons Ltd. and claimed a loss of Rs. 47,878.55 on this transaction. The Income-tax Officer held that these shares had also been sold to a company belonging to the Thapar group and under the control of that group. The Income-tax Officer took the view that the motive for selling the aforesaid shares and some other share was to make losses and set them off against the profits and these transactions could not be considered to be in the normal course of business. He held that this type of transaction could not be regarded as genuine and disallowed the claim.

The assessee preferred an appeal to the Appellate Assistant Commissioner against the order of the Income-tax Officer. In respect of the sale of the shares of Bharat Starch and Chemicals Ltd., the Appellate Assistant Commission accepted that the market quotation of these shares at Rs. 8.06 on March 31, 1959, was a nominal quotation and that there was no transaction in these shares at that rate because there was no buyer at that price and that the Income-tax Officer was wrong in relying upon this circumstance to come to the conclusion that the transaction in the sale of these shares was not genuine. He also took the Income-tax Officer was in error when he took the view that because

these shares had changed hands between companies controlled by the same group, that fact had vitiated the sale. He, however, took the view that the disallowance was correct as the shares were, in fact, purchased at Rs. 2.50 per share and sold at the same rate, that is, he disagreed with the average cost worked out by the assessee and pointed out that the basis on which such average cost was worked out had not been shown to him. He further took the view that the 25,000 shares if this company sold by the assessee constituted a large block and was connected with the acquiring of control over the Bharat Starch and Chemicals Ltd. and hence the loss should be regarded as an investment loss and not a business loss. As far as the loss on the sale of shares of Greaves Cotton and Co. Ltd. was concerned, after referring to the ground on which the Income-tax Officer had disallowed this loss, the Appellate Assistant Commissioner took the view that the holding of these shares could be reasonably attributed to the investment portfolio and hence, the said loss was a capital loss and not a business loss or a revenue loss. He further referred to the fact that the shares of this company, namely, Greaves Cotton and Co. Ltd., were not quoted in the stock exchange market. On the basis of these circumstances, he disallowed the loss.

The assessee went in further appeal to the Tribunal. The Tribunal relied upon the fact that in the earlier years, the profits made by the assessee on the sale of shares had been treated as business income and that this would show that the assessee, in the earlier years, had been regarded as a dealer in shares. The Tribunal rightly observed that, under these circumstances, there was no reason why the assessee should not be treated as a dealer in shares in the relevant previous year also. The Tribunal also pointed out that nothing was shown on the record which would suggest that the acquisition and purchase of these shares was for anything other than normal commercial purposes or that they were not made in the ordinary course of business. The Tribunal held that the mere fact that the shares have been sold to company belonging to the same group and under the same control would not be conclusive to show that the transactions were bogus and not in the normal course of business or were for an extra-commercial consideration. It was pointed out to the Tribunal by the Departmental representative concerned that these shares were shown by the assessee as investments in the balance-sheet. The Tribunal pointed out that this circumstance would not necessarily lead to the conclusion that the shares were held in the investment portfolio and not as stock-in-trade and in this connection, the Tribunal placed reliance on the decision of this court in *Karam Chand Thapar and Bros. P. Ltd. v. CIT* [1971] 82 ITR 899, wherein it was held that the circumstance that the assessee had shown certain shares as investment in its books of account as well as in its balance-sheet was by itself not a conclusive circumstance indicating that the shares were held on investment account or capital account but it was a relevant circumstance on which the Tribunal could rely for drawing an inference that the loss on the sale of the said shares was a capital loss. It may be noted that this decision shows that although the manner in which shares are shown in the balance-sheet or books of account of the assessee is relevant, it is not a conclusive factor in determining whether the shares were held as an investment or as stock-in-trade. However, the view taken by this court in that case that the loss was a capital loss as the sale of the shares was made after a long period of over ten years. In the case before us, however, the shares were sold within a much shorter period which would suggest, although by no means conclusively, that the sales were in the nature of a business transaction. The Tribunal also pointed out that the circumstance that the sales were between companies in which the Thapar group had a controlling interest and also in respect of shares of companies belonging to the same group by themselves would not support the conclusion that the transactions were stage-managed, although it might arouse suspicion and call for closer scrutiny. In respect of both the said lots of shares, the Tribunal pointed out that there was nothing to show that the purchase of these shares had anything to do with the control of the companies concerned. The Tribunal relied upon the circumstance that the sales were at the market rates or going

rates and hence there was no question of making a bogus loss. On the basis of these conclusion, the Tribunal held that the losses in respect of the sales of shares of Bharat Starch and Chemicals Ltd. as well as of Greaves Cotton and Co. Ltd. were liable to be allowed as business losses.

From this decision of the Tribunal, Commissioner of Income-tax applied to the Tribunal for referring certain questions for the determination of the High Court. The Tribunal passed an order referring only one question to the Court for determination but declined to refer the other question on the ground that the decision of the Tribunal was arrived at purely on the appreciation of the brought out in evidence and that these questions, in respect of which the Commissioner wanted a reference, were not questions of law which deserved to be referred to the court for determination. From this decision of the Tribunal, the Commissioner applied to the High Court for directing the Tribunal to refer the said questions also to the court for determination. The High Court, be its impugned judgment, rejected the said application. The present appeals is directed against the said decision of the High Court.

When the appeal reached hearing before us, Mr. Manchanda, learned counsel for the Commissioner, stated that he pressed the appeal only in respect of two questions which are as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal had any evidence and had not relied on irrelevant or partly irrelevant materials in holding that the transactions entered into by the assessee in the purchase and sale of shares of Bharat and Chemicals Ltd. and Greaves Cotton and Co. Ltd. were genuine commercial transactions and whether such finding was not otherwise unreasonable or perverse ?

(2) Without prejudice to question No. (1), whether, on the facts and in the circumstances of the case, the Tribunal's finding that the assessee entered into the transactions of purchase and sale of 25,000 shares of Bharat Starch and Chemicals Ltd. and 3,000 shares of Greaves Cotton and Co. Ltd. in the course of its business as a dealer in shares was based on no evidence or was otherwise unreasonable or perverse ?"

In deciding the question whether the Tribunal should have referred the aforesaid two questions to the court for determination, there are certain well-settled principles which have to be born in mind. In CIT v. Dalmia Jain and Co. Ltd. [1972] 83 ITR 438, this court held that whether a particular loss is a trading loss or a capital loss is primarily a question of fact. Where the Tribunal has come to a conclusion that the loss incurred by the assessee in the sale of shares held by it was a trading loss and it is not the case of the Department that in arriving at its decision, the Tribunal had taken into consideration any irrelevant material or failed to take into consideration any relevant material, there is not room for interference by the court. It is well-settled that the Tribunal is the final fact-finding body. The questions whether a particular loss is a trading loss or a capital loss and whether the loss is genuine or bogus are primarily questions which have to be determined on appreciation of facts. The findings of the Tribunal on these questions are not liable to be interfered with unless the Tribunal has taken into consideration any irrelevant material or has failed to take into consideration any irrelevant material or the conclusion arrived at by the Tribunal is perverse in the sense that no reasonable person, on the basis of facts before the Tribunal, could have come to the conclusion to which the Tribunal has come. It is equally settled that the decision of the Tribunal has not to be scrutinized sentence by merely to find out whether all facts have been set out in detail by the Tribunal or whether some incidental fact which appears on the record has not been noticed by the

Tribunal in its judgment. If the court, on a fair reading of the judgment of the Tribunal, finds that it has taken into account all relevant material and has not taken into account any irrelevant material in basing its conclusion, the decision of the Tribunal is not liable to be interfered with, unless, of course, the conclusions arrived at by the Tribunal are perverse. Keeping these principles in mind in the present case, we find that the Tribunal has taken note of all the relevant circumstances which appear on the record and which were referred to by the Departmental representatives before the Tribunal. It has not taken into account any material which could be said to be irrelevant in arriving at its conclusions. In considering whether the shares of Bharat Starch & Chemicals Ltd. and Greaves Cotton and Co. Ltd. were held by the assessee as stock-in-trade or as capital, the Tribunal has taken into account the fact assessee was earlier treated by the Department as a dealer in shares, as pointed out by Mr. Manchanda, but that circumstances cannot be regarded as irrelevant in view of the decision to which we have already referred. It is also not possible to say that the decision of the Tribunal is perverse. Mr. Manchanda strongly contended before us that the Tribunal has nowhere stated in terms that it has taken into consideration the totality of circumstances or the cumulative effect of the circumstances pointed out of the Tribunal and hence the matter should be remanded to the Tribunal. In our view, there is no substance in this submission. It is true that the Tribunal has not stated in terms that it has considered the cumulative effect of the circumstances pointed to the Tribunal, but, on the other hand, a plain reading of the judgment of the Tribunal of the Tribunal makes it clear that the Tribunal has, in fact, taken into account the cumulative effect of the circumstances on record before the Tribunal. It is not necessary for the Tribunal to state in its judgment specifically or in circumstances or has considered the totality of facts, as if that were a magic formula; if the judgment of the Tribunal shows that it has, done so, there is no reason to interfere with the decision of the Tribunal. In our opinion, there is no merit in this appeal and it must fail.

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

Appeal dismissed

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