

BOMBAY HIGH COURT

Messrs. Emerald and Co. Ltd

Vs.

Commissioner of Income Tax

I.T. Ref. No. 23 of 1955

(Chagla, C.J. and Tendolkar, J.)

27.09.1955

JUDGMENT

Chagla, C.J.

1. In view of our decision in - '*Commissioner of Income Tax v. Manecklal Chunilal and Sons Ltd.*', the contention which has been raised by the assessee on this reference cannot be accepted.

2. It appears that the assessee purchased 50 shares of the Bombay Dyeing and Manufacturing Co. Ltd. on 11-11-1950 for Rs. 49,101/- and on 9-1-1951 the Bombay Dyeing issued bonus shares of the face value of Rs. 50/- one bonus share being issued for one Company's share held by the share-holder, and therefore the assessee company, received 50 bonus shares of the face value of Rs. 50/- each. Then there were various transactions with which we are not concerned till we come to the assessment year 1952-53 corresponding to the financial year 1951-52 which is the previous year of the assessee company. At the beginning of the assessment year 1952-53 the assessee company held 350 shares of the Bombay Dyeing including 50 bonus shares. Out of these it sold 300 shares and the price realised by the sale of these 300 shares was Rs. 1,20,550/-. According to the assessee company, by this transaction the assessee company had made a loss of Rs. 35,801/-. The assessee company arrived at this loss by valuing the bonus shares at Rs. 250/- which was the face value of the shares. On the other hand, Department arrived at a loss of Rs. 27,766/- and this loss was arrived at by resorting to the method of averaging the price of the shares. This is the method which we have laid down in the decision just referred to, and the method is a very simple one. At the beginning of the assessment year the assessee company had 350 shares which included 50 bonus shares. For these 350 shares the assessee company had only paid the price for 300 shares; the 50 bonus shares it had received free. Therefore, what one must do is to take the price of the 300 shares and average it with regard to all the 350 shares, in other words, if the 300 shares cost X rupees to the assessee, by reason of getting 50 bonus shares free the X rupees would be the cost not of 300 shares but of 350 shares.

3. The contention of Mr. Kolah is that although the bonus shares were given free, if these shares had not been given he would have received a larger dividend and these bonus

¹ I.T. Ref. No. 16 of 1948 (Bom)

shares have been paid out of profits of the company. We are not concerned with the reason which induced the company to issue these bonus shares. The fact remains that the bonus shares were received free and the assessee company paid nothing for the bonus shares. Therefore the contention of the assessee company that it should be allowed to put a price of Rs. 250/- on these bonus shares is obviously untenable. The Tribunal has suggested a third method which in our opinion, is equally, with, respect, erroneous, and the method it has suggested is that the 50 bonus shares should be completely ignored and that the value of the purchase of these 300 shares on the one hand and the sale proceeds realized by the sale of these 300 shares should be taken, into consideration and the loss should be arrived at on that basis, the Tribunal takes the view that when these 50 bonus shares are sold then the time would arrive to consider what profit or loss the assessee company has made on these 50 shares. But the clear fallacy underlying the argument of the Tribunal is that the 350 shares held by the assessee company during the year of account included the 50 bonus shares and we cannot predicate that the 300 shares which were sold were shares other than the bonus shares, and you have to determine what the cost to the assessee was with regard to these 350 shares, and that cost can only be arrived at by averaging the cost by taking into consideration the fact that the 50 bonus shares were received free of cost. It is only by that method that the proper profit or loss can be arrived at. In our opinion, therefore, by reason of the decision that we gave in I. T. Ref. No. 16 of 1948 (Bom), the method of valuation adopted by the Income Tax Department was right and the loss should be assessed according to the method of the Department and not according to the assessee company or to the Tribunal.

4. The answer therefore must be that the loss by the assessee company computed by the Department is according to law. The assessee to pay the costs.

Answered accordingly.