

PATNA HIGH COURT

Dalmia Cement and Paper Marketing

Vs

Commissioner of Income-Tax

(Manohar Lall, J.)

26.01.1949

JUDGMENT

Manohar Lall, J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act by the Appellate Tribunal asking for the opinion of the Court upon the following questions :-

- (1) Whether in the facts and circumstances of the case the sum of Rs. 75,000 constitutes a revenue receipt assessable to income - tax ?
- (2) Whether in the facts and circumstance of the case the sum of Rs. 8,021 constitutes a revenue receipt assessable to income-tax ? The admitted facts are that the assessee is a limited company and inter alia carries on a business of dealing in shares and securities. The assessee held 40,000 ordinary shares of Stone Suppliers Ltd. Company BGDB (hereinafter called the Stone Company) of the face value of Rs. 4,00,000. These shares formed a part of the stock-in-trade of the assessee's share dealing business. The Stone company went into voluntary liquidation as a result of which the liquidators sold up its assets and refund to the shareholders pro rata the amount of Rs. 15,00,000 originally subscribed by the shareholders together with a further sum of Rs. 3,11,328. The amount distributed to the assessee in the assessment year 1942-43 was Rs. 4,75,000, and in the assessment year 1943-44 a further sum of Rs. 8,021. It will be noticed that the assessee thus received Rs. 75,000 plus Rs. 8,021 in excess of the amount subscribed by it when 40,000 shares in the Stone Company were purchased. On these facts the Income-tax department held that the assessee was liable to be taxed department held that the assessee was liable to be taxed on the sum of Rs. 75,000 in the first year and Rs. 8,021 in the second year by including these two sums in the assessable income of the relevant years. The assessee's contention, on the other hand, was that these two sums are capital receipts and cannot be treated as revenue receipts. The argument developed was that the assessee had not sold the shares in the market or privately or to any person, and therefore, the amounts received in lieu of the shares held by it were no more than a distribution of the assets of the Stone Company. It was further argued before us that no accumulated profit of the Stone Company fell to be distributed and,

therefore, under Section 2(6A) the amount sought to be taxed by the Income-tax department cannot be held to be a dividend within the meaning of the definition clause added in 1939. The Income-tax department has held that the sums in question were trading receipts because the assessee was a dealer in shares. The Appellate Tribunal agreed with the view, but as the instance of the assessee has referred of the question, stated above, for the decision of this Court. It is now well settled that enhanced values obtained from realisation or conversion of securities are assessable where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on or the carrying out of business : *Californian Copper Syndicate v. Harris*. This leading case has been approved by the House of Lords and the Privy Council as pointed out by Viscount Maugham in delivering the judgment of the Judicial Committee in *Punjab co-operative Bank Ltd. v. Commissioner of Income-tax*. In a later Privy Council case, *Kamakshya Narain Singh v. Commissioner of Income-tax, Bihar and Orissa*, known as the "Royalty case," Lord Wright in delivering the judgment similarly observed at page 523 : "The profit realised on the sale of shares may be capital of the seller is an ordinary investor changing his securities, but in some instances at any rate it may be income if the seller of the shares is an investment or an insurance company." It cannot be doubted that the assessee had realised its shares for a large sum than what it had paid for acquiring those shares; but as the assessee carries on business inter alia of dealing in shares, the excess profits made must be treated as income. The matter can be looked at from another point of view. The shares of the assessee are its stock-in-trade. Is this not a realisation of this stock-in-trade ? There is high authority for the view that if the assessee release his stock-in-trade either by selling it or by receiving the value of it from the insurers as a result of the stock having been lost in fire the amount received less the value of the stock-in-trade must go to the revenue account. See *Green v. J. Gliksten & Son Ltd.* But it was argued that there was no sale by the assessee of its shares. This argument does not appeal to me. In substance, it was a compulsory sale of the shares carried out in accordance with law when the liquidator distributed the assets to the shareholders. In *Imperial Tobacco Co., Ltd. v. Kelly*, the assessee company carried on a business of tobacco manufacture for which they had to purchase a large quantity of tobacco leaves in the United States. To finance the purchases, they brought dollars in the United Kingdom through their bankers who remitted them to banking accounts of the company in the United States, and it was the practice of the company to accumulate a large holding of dollars each year before the commencement of the leaf season. In September, 1939, the company at the request of the Treasury all further purchase of tobacco leaf on the United States, resulting in their having on hand of dollars which had been accumulated between January and August, 1939. On the September 30, 1939, the company were compelled under the Defense (Finance) Regulations, 1939, to sell the surplus dollars to the Treasury, and, owing to the rise which had occurred in the dollar exchange, the sale resulted in the profits for the company. It was held that even though the sale was compulsory, the profit made by the company must be treated as a revenue receipt. The Master of the Rolls referred to a number of authorities which will be found discussed at page 301.

It is true, as has been pointed out in several cases, that it is a difficult question to decide whether a particular receipt should be treated as a capital or a revenue receipt, but the facts in the present

case are so clearer that I have no difficulty in upholding the view of the Income-tax department. In two cases decided by this Court similar view was taken. In Commissioner of Income-tax, Bihar and Orissa v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, the assessee had purchased shares in a company of the value of about Rs. 8 lacs. The company went into liquidation, but a new company which was formed to acquire its assets agreed to allot a specified number of shares and debentures to every member of the old company, that is to say, that the assessee obtained the shares in the new company of the value of Rs. 4,300 and promise of debentures to the extent of Rs. 5,72,000. The debentures were never issued and the new company also went into liquidation. In the result, the liquidator paid to the assessee only Rs. 77,440. The assessee's claim to set off the loss of about Rs. 5 lacs was disallowed on the finding that there was no evidence to show that the assessee had any business of trading in shares. In Commissioner of Income-tax, Bihar and Orissa v. Maharaja of Darbhanga, the assessee was allowed to deduct a loss which was suffered by him on these facts. I am reading from page 126 :-

"Mulchand Badri Narayan owned the value of the goods supplied to them by Kunwar Ganesh Singh as the agent of the firm Sadashiva Vishwanath on the security of certain shares pledged by the debtor. These shares, which were assigned to Kunwar Ganesh Singh, were assigned by him to the assessee on the 30th of April, 1925. Some of the shares were sold for a sum of Rs. 254 during the year 1344F. The remaining shares could not be sold because they were of the company or companies which had gone into liquidation. The assessee thus suffered a loss of Rs. 13,232 which he wrote off as a bad debt in the year of assessment. Upon these facts it must be found that the loss was a business loss and not a capital loss." It will be noticed that the loss was allowed to be deducted because it occurred in the course of money lending business of the assessee. For these reasons, I would answer both the question in the affirmative.

The assessee having failed must pay costs to the Commissioner of Income-tax, Bihar and Orissa. Hearing fee, Rs. 250.

Meredith, J. - I Agree.

Reference answered in the affirmative.