
(2007) 07 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No. 2953- 2954 of 2007

Anil Jain

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Citation : (2007) 212 CTR 347 : (2007) 294 ITR 435

Hon'ble Judges : S. B. Sinha, J;H. S. Bedi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Lave granted.

2. On 7-2-2001, appellants herein invested a sum of Rs. one crore for purchasing units of J.M. Mutual Fund. For the said purpose they invested a sum of Rs. 5 lakhs and borrowed the rest of the amount, namely, Rs. 95 lakhs. On 10-2-2001, dividend of Rs. 29,03,225 was declared. On 11-2-2001, they sold the units for Rs. 68,25,806. They stated to have incurred a loss of Rs. 1,50,771.

3. One of the questions which arose for consideration before the assessing authority was as to whether the transaction in question was a business transaction and the income derived by the appellants was by way of "profit and gains from business".

4. In view of the order proposed to be passed by us, it is not necessary to take into consideration all the contentions raised before us. We may, however, notice that although the Tribunal has proceeded on the premise that the transaction in question was a genuine one, the High Court in its order opined that there was no genuine business transaction and that no loss as projected was incurred by the assessee.

5. The contentions raised before us by Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellants are that the Tribunal and consequently the

High Court committed a manifest error insofar as they failed to take into consideration : (i) that the appellants had a clear intention to earn profit as the amount of dividend earned by them should have been taken into consideration having regard to a decision of this Court in G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax, , and (ii) the same transaction entered into by the appellants herein in the subsequent years had been accepted as a business income.

6. From the records it appears that the appellants had raised a specific plea before the Commissioner of income tax as also before the Income Tax Appellate Tribunal that there had been continuity on the part of the appellants in making such investments and keeping in view the fact that the appellants had derived profit in subsequent years, the same has been accepted to have been derived from the business. We find from the records that such question has specifically been raised before the Tribunal and it had asked the assessee's counsel to furnish details of purchase and sale of securities / shares effected in subsequent years which had been complied with. The Tribunal, unfortunately, in its impugned judgment had not taken into consideration the said fact.

7. In view of the judgment of this Court in G. Venkataswami Naidu & Co.s case (supra) one of the tests which is applicable for the purpose of arriving at a finding whether the transaction was "profit and gains from business" or "adventure in the nature of trade" is that similar operation which was similar to the one carried out by the assessee would be a relevant factor. We are, therefore, of the opinion that the interest of justice would be subserved if the judgment of the High Court as also of the Tribunal are directed to be set aside and the matter is remitted to the Tribunal for consideration of the matter afresh for consideration of that aspect of the matter. We, however, make it clear that it would be open to the parties to raise all other contentions before the Tribunal.

8. The appeals are allowed with the aforementioned observations. No costs.