

(2007) 08 DEL CK 0052
In the Delhi High Court
Case No : ITA No. 383 of 2007

Commissioner of Income Tax	Vs	APPELLANT
Essjay Enterprises P. Ltd.		RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2008) 173 TAXMAN 1 : (2007) 165 TAXMAN 465

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : P.L. Bansal, for the Appellant; None, for the Respondent

Judgement

Madan B. Lokur, J.

ITA No.383/2007

1. The Revenue is aggrieved by an order dated 26th May, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "C" in ITA No. 1818/Del/2000 with ITA No. 1794/Del/2001 relevant for the assessment year 1996-97 and 1997-98.
2. The assessed had purchased 95,000 shares of M/s. Jai Prakash Industries Ltd. (JPIL) in 1990-91. Subsequently, on the basis of its holding, the assessed was issued some rights shares. In 1993-94, the assessed purchased another 20,000 shares of M/s. JPIL.
3. The shares held by the assessed were then sold by it in the previous year relevant to the assessment year that we are concerned with. On the amount received by the assessed, it claimed a sum of Rs. 23,38,928/- as capital gains.
4. The Assessing Officer, however, was of the view that the entire income of Rs.65,78,619/- was required to be assessed as business income.
5. The assessed was aggrieved by the view taken by the Assessing Officer and preferred an appeal, which was allowed by the Commissioner of Income Tax

(Appeals).

6. The Revenue then took up the matter before the Tribunal which dismissed the appeal and that is how the matter is before us u/s 260-A of the Income Tax Act, 1961.

7. We are of the view that the Tribunal has not committed any error in the opinion expressed by it. The assessed held the shares as an investment and there is nothing to show that the investment was converted into stock in trade of the business of the assessed. In fact, the business of the assessed appears to have been that of running a restaurant. It is true that one of the objects mentioned in the Memorandum of Association is with respect to buying and selling of shares but that was neither the business of the assessed nor is there any on record to show that the assessed was regularly dealing in shares.

8. The Supreme Court in Raja Bahdur Kamakhya Narain Singh Vs. The Commissioner of Income Tax, Bihar and Orissa, , took the view that the treatment given to a transaction in the books of account is of importance. As noted above, the assessed had shown its shareholding in JPIL as an investment and not a stock in trade of business. As already noted, there is nothing to show that the shares were converted into stock in trade.

9. Under these circumstances, the Commissioner as well as the Tribunal were justified in holding that the claim of the assessed for capital gains was justified and that the Assessing Officer was not correct in taking the income of the assessed from the sale of shares as business income.

10. No substantial question of law arises in this appeal.

11. Dismissed.