(1990) 10 CAL CK 0008

In the Calcutta High Court

Case No : IT Reference No. 210 of 1987

Commissioner of Income Tax APPELLANT

Vs

Pormutit Boby Ltd. RESPONDENT

Date of Decision : 31-10-1990

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 48, 55

Citation : (1990) 10 CAL CK 0008

Hon'ble Judges : Bhagabati Prosad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the income tax Act, 1961 (''the Act'') for the assessment year 1981-82, the following question of law has been referred to this Court: Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the price which the assessee paid in acquiring 9,600 equity shares of Ion Exchange (India) Ltd. on 17-7-1964 would be the cost of acquisition u/s 48 of the income tax Act, 1961, for the purpose of determining the capital gains arising to the assessee on sale of the said shares during the previous year relevant for the assessment year 1981-82?

Shortly stated, the facts are that the assessee is a non-resident company. It acquired 1,50,000 shares of Ion Exchange (India) Ltd. of the face value of Rs. 10 each on 17-1-1964. In acquiring the aforesaid shares the assessee paid Rs. 14 lakhs in cash in respect of 1,40,000 shares and the balance 10,000 shares were allotted to the assessee for consideration other than cash. Subsequently, between 6-9-1971 and 28-8-1979 the assessee received from the said company bonus shares aggregating in all to 2,34,000 shares on the following dates:

Dates

No. of bonus shares received

6-9-1971

30,000

7-1-1974

60,000

28-8-1979

1,44,000

2,34,000

2. The total holding of the aforesaid shares by the assessee thus came to 3,84,000 (1,50,000 plus 2,34,000). In the assessment year 1981-82 for which the previous year was the calendar year 1980. The assessee sold 9,600 equity shares of the said company Ion Exchange (India) Ltd. out of those 1,50,000 shares which included 10,000 shares for which it did not pay any cash. The ITO in computing the capital gains arising on sale of these shares was of the view that the cost of acquisition of the shares sold was nil The ITO by following the Supreme Court decision in the case of Commissioner of Income Tax, Bihar Vs. Dalmia Investment Co. Ltd., worked out the cost of acquisition of the shares sold by spreading the initial cost of Rs. 14 lakhs over the total number of shares held by the assessee including bonus shares aggregating to 3,84,000 and thereby determined the cost of acquisition of the shares at Rs. 35,040 at the rate of Rs. 3.65 per share. The shares were sold for a consideration of Rs. 2,05,440. The ITO worked out the long-term capital gain at Rs. 1,67,200 by deducting Rs. 38,240, being the cost of acquisition of the shares together with the expenditure incurred on transfer of shares from the sale price of Rs. 2,05,440.

3. Before the Commissioner (Appeals), the assessee disputed the cost of acquisition of the shares determined at Rs. 35,040. It was contended that the assessee had been allotted 10,000 equity shares in lieu of technical know-how supplied by the assessee and, therefore, the ITO was wrong instating that the cost of acquisition of the shares was nil It was further urged that the shares were acquired on 17-7-1984 and the cost incurred by the assessee on that date in acquiring the shares should have been taken into account by the ITO. The Commissioner (Appeals) held that the ITO was wrong in determining the cost of acquisition of the shares on the basis of averaging the cost of original shares and the bonus shares received thereon. He held that the price which the assessee paid for acquiring 9,600 equity shares on the date of acquisition would be the cost of acquisition for the purpose of computing the capital gains.

4. The department came up in second appeal before the Tribunal. The Tribunal was of the view that the question raised before the Tribunal was concluded by the decision in the case of Smt. Protima Roy Vs. Commissioner of Income Tax, . The Tribunal, therefore, held that the Commissioner (Appeals) was justified in observing that the price which the assessee paid in acquiring 9,600 equity shares on 17-7-1964 would be the cost of acquisition in terms of section 48 of the Act for the purpose of determining the capital gains arising to the assessee.

5. It appears to us that this question is squarely covered by the decision of this Court in the case of Smt. Protima Roy (supra). In that case the assessee owned 20,200 shares in Jaipur Udyog Ltd., 12,900 shares in Orissa Cement Ltd. and 1,000 shares in Dubhar Mills Ltd. It appears, during the assessment year 1967-68, the assessee received 2,580 bonus shares from Orissa Cement Ltd. totalling 15,480 holding shares in that company. In the assessment year 1968-69, the assessee received 4,040 bonus shares in Jaipur Udyog Ltd. also and the shareholding in this company thus became 24,240. In the assessment year 1968-69, the assessee sold away the entire shareholdings in the Jaipur Udyog Ltd. and Orissa Cement Ltd. and claimed to have suffered a loss of Rs. 75,280 as compared to the reduced cost of the shares at which these were purchased by the assessee from time to time. In the assessment year 1969-70, the assessee also received 250 shares from Jaipur Udyog Ltd. which raised the assessee''s holding in that company to 1,250 shares. These shares were also sold by the assessee in the same assessment year at a loss of Rs. 19,573 with reference to the cost price of the original shares. Before the ITO it was claimed that the loss suffered was higher inasmuch has the sale also included the bonus shares which had to be valued separately in view of the decision of the Supreme Court in the case of Dalmia Investment Co. Ltd. (supra). The ITO, however, rejected this claim and determined the loss on the figure stated above. There was an appeal before the AAC. He agreed with the ITO''s findings in both these years. Being aggrieved by the said order, the assessee went up in appeal before the Tribunal. There, the assessee repeated its claim and it was argued before the Tribunal that the sales included the bonus shares but this had to be separately valued in accordance with the principles laid down by the Supreme Court in the above-mentioned case, which value had to be added to the cost of the original shares and the resultant losses required to be allowed in the computation of the assessee''s income. The Tribunal after considering the rival contentions held that with the issue of the bonus shares there was depreciation in the value of the assessee''s original shares and, therefore, its claim that the value of the bonus shares should be separately added to the original cost of the original shares, cannot be accepted. In the opinion of the Tribunal in the circumstances of the case, the lower authorities were justified in holding that the value of the entire holding of the assessee was equal to the cost of the original shares.

There the Division Bench held as follows:

We are here concerned with the question as to how the cost of the original shares is to be computed in case bonus shares are issued. How the bonus share is to be computed is not the dispute before us. So far as this question is concerned, namely, how the cost of the original shares would be computed, in our opinion, it must be done with regard to the terms of the section, that is to say, the cost of acquisition of the original shares to the assessee as modified in cases, where applicable, by sub-section (2) of section 55. Subsequent deflation or inflation of the value of the shares by a subsequent event would not and cannot alter the original cost to the assessee. The frame of the section does not permit such a theory to attribute the cost to the assessee in respect of the original shares to fluctuate with the value of the shares subsequently by the happening of such an event like the issuing of the bonus shares or otherwise.... (p. 547)

6. It, therefore, appears to us that the cost of acquisition of the original shares was immutable. It can be either the actual cost of acquisition or at the choice of the assessee the market value thereof on 1-1-1974. The latter value would only be substituted as permitted by the statute and would be deemed to be the cost of acquisition. Once this election was made, subsequent issue of bonus shares would have no effect on the cost of acquisition of the original shares and the capital gains on the transfer of such original shares had to be calculated on such cost.

7. Having regard to the facts and circumstances of this case and the principles laid down in the aforesaid case we are of the view that the Tribunal came to the correct conclusion. We, therefore, answer this question in the reference in the affirmative and in favour of the assessee and against the revenue. There will be no order as to costs.

Bhagabati Prosad Banerjee, J.

I agree.