

(1965) 03 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.C.C. No. 254 of 1963

Kailashchandra

APPELLANT

Vs

Commissioner, Income Tax

RESPONDENT

Date of Decision : 22-03-1965

Acts Referred:

Income Tax Act, 1922 — Section 66(2)

Citation : (1966) JLJ 124

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.K. Tankha and P.C. Pathak, for the Appellant; M. Adhikari, Advocate General and R.J. Bhawe, Government Advocate, for the Respondent

Judgement

P.V. Dixit, C.J.—This reference has been made by the income tax Appellate Tribunal, Bombay, pursuant to two orders passed by this Court on applications made by the Assessee Kailashchandra Tejpal u/s 66(2) of the Indian income tax Act, 1922, requiring the Tribunal to state the case and refer to this Court certain questions arising out of two orders of the Tribunal disposing of appeals arising out of assessment proceedings against the Assessee for the assessment years 1954-55 and 1956-57. As the facts are common, the Tribunal has made a consolidated reference. The questions of law, which the Tribunal was directed to refer to this Court for the assessment year 1954-55 are—

(i) Whether on the facts and in the circumstances of the case, the Assessee was a dealer in shares or an investor ?

(ii) Whether the loss of Rs. 8,506 on account of the sale of 80 shares was a business loss ?

The questions propounded for the assessment year 1956-57 are—

(i) Whether on the facts and in the circumstances of the case, the Assessee was a dealer in shares or an investor ?

(ii) Whether the loss of Rs. 12,506 on account of sale of 120 shares was a (sic) loss?

(SIC) disallowing the assessee's claim on the ground that the shares were purchased and sold by the assessee who was interested in the management of Malwa Mills Ltd., and Hukumchand Mills Ltd. and had a share in the managing agency commission of both these Mills, therefore the loss suffered by him on account of the sale of shares could not be allowed as a trading loss. The Tribunal confirmed the orders of the Appellate Assistant Commissioner disallowing the loss claimed by the assessee in the assessment proceedings for the aforesaid two years.

3. The facts as found by the Tribunal, are that the Assessee carried on forward business in several commodities, such as cotton, bullion, shares etc. He also derived Income as a partner in a firm known as Sheonandrai Tejpal and from the managing agency of the Hukumchand Mills Ltd. On the basis of a statement given by the Assessee himself showing his transactions of purchase and sale of shares of Hukumchand Mills Ltd., the Tribunal founds that the Assessee purchased 31 shares of the said Mills on 29th July 1948 at Rs. 658 per share and sold on 9th December 1948 Sixteen shares at Rs. 569 per share. The loss incurred in the sale of Sixteen shares amounting to Rs. 1,424 was allowed in the income tax assessment for the assessment year 1950-51. On 26th July 1949 the Assessee purchased 85 shares of the Milis at Rs. 425 per share and at the end of S. Y. 2005 he had 100 shares of Hukumchand Mills Ltd., on hand. Sometime in 1950 these 100 shares were converted into 300 shares at the rate of three new shares for every one old share and the Assessee continued to hold these 300 shares till the accounting year S. Y. 2005 when on 7th December 1952 he sold 100 out of these 300 shares privately to one Gayaprasad. The Assessee led no evidence before the Tribunal to show that the sale was at the market rate. He also did not claim in the course of the relevant assessment proceedings the loss said to be incurred by him on account of these 100 shares. The balance of 200 shares was carried forward to the following S. Y. 2010, In that year 80 shares were sold on 30th March 1954 to one Motilal, and according to the Assessee he concurred a loss of Rs. 8560 in the sale these shares. It is this amount which the Assessee claimed as loss in the assessment for the year 1954-55. The remaining 120 shares were carried forward and sold in one lot in S. Y. 2011 to one Jankibai. The loss on account of the sale of these shares amounting to Rs. 12,500 was claimed by the Assessee as trading loss in the assessment year 1956-57.

4. Early in 1950 the firm Sir Hukumchand Ma(sic) acquired the managing agency of the Hukumchand Mills(sic) was a partner in the firm of Sheonandrai Tejpal, This fim(sic) agreement with Mannalal Onkarji, a partner in the man(sic) of Sir Hukumchand Mannalal and Co., holding 1/8th share(sic) Mannalal agreed to share 25% out of his 1/8th share(sic) agency commission with the firm Sheonandrai Tejpal. The(sic) (sic) was given to Mannalal Onkarji by the firm Sheonand(sic) he partners of the latter firm purchased shares of the Hukumchand Mills Ltd., in their own names. In the accounting year S. 2012 (that

is, from 15th November 1955 to 2nd November 1956), the firm of Sir Hukumchand Mannalal and Co., lost its managing agency of the Mills which then was acquired by one Ramkumar Morarka.

5. On these facts, the Tribunal came to the conclusion that so far as the purchase and sale of shares of the Hukumchand Mills Ltd., was concerned, the Assessee was an investor and the loss incurred by him in the sale of those shares was an investment loss; and that the Assessee continued to hold these shares so long as he had an interest in the management of the Mills and a share in the managing agency commission of the Mills.

6. In our opinion, the Tribunal was right in coming to the conclusion that it did. The burden of proving that the purchase and sale of the shares in question was in the course of Assessee's business as dealer in shares and not by way of investment clearly lay on the Assessee. The only material that the Assessee placed before the income tax authorities was about the purchase and sale of shares of the Hukumchand Mills Ltd. in the manner stated earlier. The Hukumchand Mills' shares were purchased in 1948-49 and were sold a long time after their purchase. After the purchase effected in 1948-49, the Assessee did not purchase any shares of the Hukumchand Mills Ltd. The Assessee retained those shares so long as he was interested in the management of the Mills and had a share in the managing agency commission of the Mills under the agreement he entered into with Mannalal Onkarji. The Assessee led no evidence to show that his intention in purchasing the shares was to acquire them as part of the Stock-in-trade of his business in shares. He did not even produce any evidence with regard to the market rate of the shares on the dates on which he purchased or sold them. This evidence was necessary, for as held by the Supreme Court in *Ramnarain Sons (Private) Ltd., v. C.I.T.R.* 534(sic) and *C.I.T. v. National Finance Ltd.* R. 788(sic), "in considering whether a transaction was or was not an adventure in the nature of trade, the problem must be approached in the light of the intention of the Assessee having regard to the "legal requirements" which are associated with the concept of trade or business".

7. Shri Tankha, learned Counsel for the Assessee, contended that as the Tribunal had found that the Assessee was a dealer, it must, therefore, be taken that the sale of the Hukumchand Mills' shares was in the course of the Assessee's business as a dealer in shares. There is no force in this (sic) the mere fact that the Assessee was a dealer in shares, (sic) that the transactions in Hukumchand Mills' shares were (sic) ones. What the Assessee had to establish was that qua (sic) sale of Hukumchand Mills' shares he was a dealer and (sic) this is clear from the principle laid down by the *Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay*, *Ramnarain Sons (Pr.) Ltd. Vs. Commissioner of Income Tax, Bombay*, and *Raja Bahadur Visheshwara Singh and Others Vs. Commissioner of Income Tax, Bihar and Orissa*, that the fact that an Assessee is a dealer in shares or that an Assessee-company was formed with the object of dealing in shares does not invest each and every transaction done by the Assessee with the

characteristics of a trade in shares but that other circumstances along with that fact must be considered to find out the real object of a particular venture. The circumstances which is strongly indicative in the present case of the fact that the sale of the shares was not in the course of the Assessee's business as a dealer in shares, is that the Assessee retained those shares so long as he was interested in the management of the Mills and his share in the managing agency commission under the contract which he had entered into with Mannalal Onkerji. Learned Counsel for the Assessee said that the shares were purchased in 1948-49, and at that time the Assessee had not obtained any share in the managing agency commission. That is no doubt true. But in the absence of any evidence to show that from the inception the Assessee had an intention to purchase and resale shares, either at a profit or otherwise deal in them, the fact that the Assessee entered into an agreement with Mannalal Onkerji for sharing his 1/8th share in the managing agency commission as a partner of the firm Sir Hukamchand Mannalal and Co. and that he retained those shares so long as he was interested in the management of the Hukamchand Mills and in sharing the managing, agency commission, clearly shows that the real object of the Assessee was not to do business in those shares but to acquire capital asset out of which he could get a share in the managing agency commission.

8. In our judgment, on the material on record, the Tribunal was right in holding that the loss suffered by the Assessee in the sale of Hukamchand Mills' shares was not a loss in the trade in shares. Accordingly we answer all the four questions in the negative. The Assessee shall pay costs of this reference. Counsel's fee is fixed at Rs. 150/-.