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(2011) 01 MAD CK 0085

In the Madras High Court

Case No : Tax Case (A) No. 519 of 2004

M.B and Company Ltd. since amalgamated with Matheson Bosanquet Enterprises Ltd. — APPELLANT

Vs

The Assistant Commissioner of Income Tax — RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:
Income Tax Act, 1961 — Section 148, 55(2)

Citation : (2011) 337 ITR 29 : (2011) 198 TAXMAN 168

Hon'ble Judges : N. Kirubakaran, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : R. Venkatanarayanan, for Subbaraya Aiyar Padmanabhan, for the Appellant; J. Nareshkumar, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The Assessee is the Appellant. The substantial question of law that arises for consideration in this appeal reads

as under:

Whether on the facts and in the circumstances of the case, the Tribunal was right in not accepting the cost of acquisition of shares as adopted by

the Appellant?

2.The brief facts which are required to be stated are that the Appellant filed its return of income for the Assessment Year 1990-91 declaring a total

income of Rs. 3,22,760/-. The Assessing Officer issued a notice u/s 148 of the Income Tax Act, 1961 (for short, ''the Act'') on 01.8.1995 calling

upon the Assessee to show cause as to why the sale proceeds of bonus shares should not be brought to capital gains tax. The Appellant filed a

revised return on 27.10.1995 again declaring the same total income.

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3. The Appellant had transferred the shares owned by it in M/s. Parkside Explosives & Industries Limited. While computing the cost of acquisition

of 85,076 shares of the said Company, originally 42,538 shares were acquired for a price and Anr. 42,538 shares were acquired subsequently as

bonus shares. Similarly, the Appellant sold 31,078 equity shares of M/s. Coonoor Tea Estates Company Limited, of which, 15,539 were acquired

by the Appellant for a price and Anr. 15,539 shares were acquired subsequently as bonus shares. While determining the cost of acquisition of

these shares, the Appellant opted for taking the original cost of acquisition and not the fair market value of the shares invoking Section 55(2)(b)(i)

of the Act. In respect of the shares originally acquired, the original cost of acquisition was adopted and in respect of the bonus shares, the

Appellant adopted the cost of acquisition by averaging the original cost of acquisition over the number of shares.

4. In order to appreciate the method of cost applied, it would be worthwhile to refer to the revised computation statement submitted by the

Assessee, which reads as under:

(i) Sale of 85076 equity shares of Rs. Rs.

Parkside Explosive & Industries Ltd. 29,77,660

Cost of 42538 original shares at

Original cost 12,99,274

Cost of 42538 bonus shares at

average cost 6,49,637

19,48,911

(A) 10,28,749

(ii) Sale of 31078 Equity shares of

Coonoor Tea Estates Co.Ltd. 9,63,418

Cost of 15539 original shares at

Original cost 4,47,015

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Cost of 15539 Bonus shares at

average cost 2,23,508

6,70,523

(B) 2,92,895

(iii) Sale of 17522 equity shares of

Lucky Valley Investments &

Holdings Ltd. 5,60,704

Cost of 17522 equity shares at

1-4-74 market value 3,46,060

(C) 2,14,644

TOTAL (A + B + C) 15,36,288

48(2) Basic Deduction 10,000

30% of Balance 4,57,886

4,67,886

10,68,402

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5. The Assessing Authority, however, applied the ratio laid down in the decision of this Court in COMMISSIONER OF Income Tax, MADRAS

Vs. T.V.S. and SONS LTD., and worked out the capital gains as under:

(i) Sale price of 85076 equity shares Rs.

of Parkside Explosives & Industries

Ltd. 29,77,660

Less: Cost of 85076 equity shares

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consisting of 42538 original shares +

42538 bonus shares (i.e.Rs.649637 +

Rs.649637) 12,99,274

Capital Gain (A) 16,78,386

(ii) Sale price of 31078 equity shares of

Coonoor Tea Estates Co.Ltd. 9,63,418

Less: Cost of 31078 equity shares

consisting of 15539 original shares +

15539 bonus shares (i.e. Rs.223508 +

Rs.223508) 4,47,015

Capital Gain (B) 5,16,403

(iii) Sale price of 17522 equity shares of

Lucky Valley Investments & Holdings

Ltd. 5,60,704

Cost of 17522 shares at Market Value

as on 1-4-1974 3,46,060

(C) 2,14,644

TOTAL OF (A + B + C) 24,09,433

Less: (1) Basic Deduction 10,000

(2) 30% of the Balance 7,19,830

7,29,830

Long-Term Capital Gains 16,79,603

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6. Aggrieved against the same, the Appellant approached the Commissioner of Income Tax (Appeals) and the CIT (Appeals) having dismissed the

appeal, further appeal was preferred by the Appellant before the Income Tax Appellate Tribunal and by the order impugned in this appeal, the

Tribunal also rejected the stand of the Appellant. That is how the Appellant has come forward with the present appeal before us.

7. We have heard Mr. R. Venkatanarayanan, learned Counsel for the Appellant and Mr. Naresh Kumar, learned Senior Standing counsel for the

Respondent.

8. The learned Counsel for the Appellant, in his submissions, relied upon the subsequent Division Bench decision of this Court reported in

Commissioner of Income Tax Vs. R. Ramachandran, and contended that having regard to the said Division Bench decision, wherein the TVS &

Sons case (supra) has also been referred to, the method adopted by the Appellant for working out the capital gains in respect of the disposal of

shares held by it, both original as well as bonus, alone should have been accepted and therefore the orders of the Tribunal as well as that of the

lower authority should be set aside.

9. As against the above submissions, Mr. Naresh Kumar, learned senior standing counsel for the Respondent, by drawing our attention to the

principles in regard to the valuation to be made for arriving at the capital gains in the matter of sale of shares of original acquisition and the bonus

shares together, as stated by the Commissioner of Income Tax (Appeals) contended that the case on hand inasmuch as the value as on 01.4.1974

was to be applied, the decision reported in COMMISSIONER OF Income Tax, MADRAS Vs. T.V.S. and SONS LTD., alone would apply and

that the subsequent Division Bench decision reported in Commissioner of Income Tax Vs. R. Ramachandran, itself has specifically made a

distinction as to how in that case the decision reported in COMMISSIONER OF Income Tax, MADRAS Vs. T.V.S. and SONS LTD., was not

applicable.

10. Having heard the learned Counsel for the Appellant as well as the learned senior standing counsel for the Respondent and having perused the

orders impugned, we find force in the submission of the learned standing counsel

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for the Respondent.

11. As narrated above, in the case on hand, the sale of shares made by the Appellant related to the original shares along with the bonus shares

acquired by him. Having regard to the year of sale, the calculation will have to be made by treating the cut-off date, viz., 01.4.1974 as was

stipulated u/s 55(2)(b)(i) of the Act. Keeping the said fact in mind, when we analyze the ratio laid down by the earlier Division Bench of this Court

in the decision reported in COMMISSIONER OF Income Tax, MADRAS Vs. T.V.S. and SONS LTD., , the principle laid down therein has

been clearly set out at pages 648 and 649, which reads as under:

It must be clear, as a principle of elementary arithmetic, that by getting at the average cost of bonus shares which are included in the total holdings

consisting of original shares and bonus shares, the average cost of original shares must inevitably get reduced pro tanto. To take a very simple

illustration, if a shareholder holds a single share which he has purchased at Rs. 100 and subsequently a bonus share is issued to him, then, on the

theory of averaging and of obtaining the notional cost of the bonus shares, the purchase cost of Rs. 100 for the single original share must be divided

by two, one for the original share and the other for the bonus share. The result of this averaging is that the cost of each share would be Rs. 50.

There are two consequences of the principle of averaging, namely, (i) to attribute to the bonus share a cost when for that share there is no actual

cost of acquisition, and (ii) to reduce the actual cost of the original share to the extent that a notional cost is attributed to the bonus share. In other

words, the cost of the original share will be reduced pro tanto to the extent of the cost attributed to the bonus share.

12. Keeping the above principle in mind, when we examine the case on hand, as directed by the CIT (Appeals) in his order, the Appellant opted

for the adoption of actual cost of acquisition since the fair market value as on 01.4.1974 was less than the actual cost. It was, therefore, necessary

to examine what the actual cost of acquisition was. As vividly explained by the Division Bench in TVS & Sons case (supra), the price paid by the

Appellant for the original shares was not only for the original shares themselves but also for such shares which had yielded subsequently in the form

of bonus shares and consequently the method of spreading over the cost of

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acquisition from the original shares on both the original and the bonus

shares was the only proper method of determining the value of original shares, which were shown after the issue of the bonus shares and the sale of

both were effected to them. Viewed in that respect, the method of calculation as adopted by the Assessing Officer was perfectly in order and

consequently the long term capital gains as arrived at by the Assessing Officer was fully justified.

13. As far as the later Division Bench decision of this Court reported in Commissioner of Income Tax Vs. R. Ramachandran, is concerned, at

page 511, the Division Bench itself has stated as to how the decision reported in COMMISSIONER OF Income Tax, MADRAS Vs. T.V.S. and

SONS LTD., cannot be applied, as in the said case, the said issue related to the shares held prior to 01.1.1954 and in respect of the sale of said

shares along with the bonus shares, the Assessee therein opted for the fair market price and consequently the decision reported in

COMMISSIONER OF Income Tax, MADRAS Vs. T.V.S. and SONS LTD., could not be applied by the Division Bench. Therefore, the

subsequent Division Bench decision reported in Commissioner of Income Tax Vs. R. Ramachandran, has no application to the facts of this case.

14. We, therefore, do not find any flaw in the conclusion of the Tribunal while affirming the order of the Assessing Officer as well as that of the CIT

(Appeals). The question of law is, therefore, answered against the Appellant and in favour of the revenue. The appeal fails and the same is

dismissed. No costs.

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