
(1963) 04 CAL CK 0001

In the Calcutta High Court

Case No : S.A. No. 958 of 1957 and S.A. No. 549 of 1961

Saroj Kumar Bose

APPELLANT

Vs

Jatindra Nath Mondal and Others

RESPONDENT

Date of Decision : 11-04-1963

Acts Referred:

Bengal General Clauses Act, 1899 — Section 3(21)
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3(25)
Transfer of Property Act, 1882 — Section 105, 106, 54
West Bengal Estates Acquisition Act, 1953 — Section 3(2), 3(21), 4, 44, 5

Citation : 67 CWN 764

Hon'ble Judges : Chatterjee, J;A.C. Sen, J

Bench : Division Bench

Advocate : Manindra Nath Ghosh, Hemesh Chandra Sen and Radhakanta Bhattacharya in S.A. 958/57, for the Appellant; Manindra Nath Ghosh, Hemesh Chandra Sen and Radhakanta Bhattacharya in S.A. 549/61, for the Respondent

Final Decision : Allowed

Judgement

SINHA J. - This is a reference u/s 66(1) of the Income Tax Act. The facts are as follows : The assessee are a public company and its managing agents in Messrs. Karam Chand Thapar and Bros Ltd. The said managing agents are also the managing agents of two other companies, namely, the Standard Refinery and Distillery Ltd. and Karam Chand Thapar & Sons Ltd. The Standard Refinery and Distiller Ltd. is a company carrying on business of sugar refinery and distillery and also sugar manufacturing. Karam Chand Thapar and Sons Ltd. is an investment company. The assessee company was carrying on business in various lines. As I will presently mention, it has been found as a fact that one of the objects of its incorporation was dealing in shares. The Standard Refinery and Distillery Ltd., purchased 41,300 shares of the New Savan Sugar and Gur Refinery Co. Ltd. at a price of Rs. 12,17,006 during the period between January and April, 1946. In April, 1947, the entire block of shares was sold to assessee

company at Rs. 8,46,750. On 28th June, 1948, the assessee company sold these shares to Karam Chand Thapar and Sons Ltd. at Rs. 4,74,950 resulting in a loss of Rs. 3,71,300. About one year after the transaction took place, Messrs. Karam Chand Thapar and Sons Ltd. were appointed as the secretary of the New Savan Sugar and Gur Refinery Ltd. In respect of the assessment of the assessee firm, namely, the Produce Exchange Corporation Ltd., Calcutta, for the year 1949-50 the question arose as to how to treat this loss at Rs. 3,71,300. The Income Tax Officer held that the transaction was in the nature of an investment and, therefore, he disallowed the loss. The Appellate Assistant Commissioner upon appeal held that the assessee was a dealer in shares and this was a trade loss and it should be allowed. This view was upheld by the Tribunal. Upon that, a question has been referred to us as follows :

"Whether on the facts found and having regard to the nature of the assessee's business, the inference drawn by the Tribunal that the transaction in shares was an adventure in the nature of trade could reasonably be drawn and was in accordance with law ?"

This naturally brings us to a consideration of the order of the Appellate Tribunal which is to be found at pages 29 and 31 of the paper-book. The Tribunal, after stating the salient facts already mentioned above, recorded that four facts had been established, and they were as follows :

1. In the assessment year 1947-48 and 1948-49 the assessee was found to be dealing in shares and the profits with respect to those dealings were brought to tax.
2. The shares were purchased with borrowed money.
3. Both the purchases and sales were at the prevailing market rate.
4. One of the objects of the assessee company was to carry on business in dealing in shares.

After having found these facts, the Tribunal considered the findings of the Income Tax Officer and disagreed with it. It was observed that these shares may have ultimately come to Karam Chand Thapar and Sons Ltd., an investment company, or the managing agents, Messrs. Karam Chand Thapar and Bros. Ltd., may have been influencing the purchase and sales. But these facts by themselves did not prove that the assessee company had purchased the share for investment. It was held that, on the facts found, it was not possible to hold that it was purchased for investment, and it was very unlikely that in a falling market the assessee company would purchase shares with borrowed money for investment purposes. The Tribunal, therefore, agreed with the Appellate Assistant Commissioner and held that this was a trade loss. It has now come up before us for consideration of the question set out above.

It is firmly established in the proceeding such as this, we cannot go behind the facts held by the Appellate Tribunal, unless there is ground for thinking that the

findings of fact are not based on any evidence at all or contrary to such evidence or are capricious. None of these elements having been established, we must hold ourselves bound by the facts found by the Appellate Tribunal. The only question, therefore, for us to determine is whether on those facts a reasonable body of men would come to the conclusions arrived at by the Appellate Tribunal. We do not see why they could not come to the conclusion that the amount in question was a trade loss and not a loss in the course of investment. It will be observed that the shares were purchased and sold at the prevailing market rates. Undoubtedly, the suggestion is that the whole transaction was not real but was engineered by the managing agents in order to gain control of a particular company. That is a case that could have been established by evidence. On the other hand, the way that the case was run before the Income Tax Officer was that the shares were purchased for the purpose of investment and that the amount concerned was an investment loss. On the facts found it is certainly possible to come to the conclusion that the shares were not purchased by way of investment. On the facts found the Appellate Tribunal could reasonably come to the conclusion that the shares were not purchased by way of investment but inasmuch as one of the objects of the company was carrying on business as dealers in shares, the sale and purchase of these shares constituted an ordinary business transaction and the loss incurred was a trade loss. Since the shares were purchased and sold at market rates, it is very difficult to understand how the managing agents must be taken necessarily to have been manipulating the market. Instead of buying or selling the share within the group, the parties concerned might have gone into the market and bought and sold the shares. There is no foundation made for the suggestion that the shares were not readily available in the open market.

Mr. Pal has referred us to a decision of the Supreme Court in *The Commissioner of Income Tax, Delhi and Rajasthan Vs. National Finance Ltd.*, . The facts in that case were as follows : Six companies were brought into a group, with a single individual as the person who had the controlling voice. As a result of the manipulation of this person, certain shares in a company were bought within this group at higher than market prices and subsequently the managing agency of this new company was acquired. Not only was it acquired, but there was a profit. It was found that in order to wipe out this profit, another transaction of sale at fictitious prices was staged and the profit was wiped out by an alleged loss. On the facts and circumstance of the case, the Supreme Court held that this was not a genuine business transaction and could not be considered as an allowable loss. I do not see how this case can be of assistance, because it depended on its own facts. The facts in the present case are quite distinguishable. In the present case, the shares were dealt with at the market price and no foundation was laid for showing that the transactions were not genuine transactions. Simply because a year after the transaction the purchaser acquired the secretaryship of a company cannot be decisive of the question as to whether the transaction was an investment or a dealing in shares. In our opinion, on the facts found, the Tribunal

was entitled to come to the conclusion that the transactions were in the usual course of business and not by way of investment and that the disputed amount should be allowed as a trade loss.

The result is that the question asked should be answered in the affirmative. The assessee is entitled to the costs of this application. Certified for two counsel.

DATTA J. - I agree.