
(1977) 04 AHC CK 0026

In the Allahabad High Court

Case No : Income-tax Reference Miscellaneous Case No. 610 of 1973

Seth Banarsi Das Gupta

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 29-04-1977

Acts Referred:

Citation : (1977) 108 ITR 377

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : V.K. Khanna, for the Appellant; Deokinandan and Ashok Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—In this reference the following two questions of law have been referred for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, depreciation is allowable on the 1/6th share in S. B. Sugar Mills, Bijnor, which the assessee had acquired from Seth Shiv Prasad ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the loss of Rs. 3,90,750 arising on sales of shares of M/s. Jaswant Sugar Mills Ltd. was loss of capital nature ?"

2. So far as question No. 1 is concerned, it is concluded by the decision of this court in Seth Banarsi Das Gupta Vs. Commissioner of Income Tax, , a case of this very assessee, but for a different assessment year. Counsel for the assessee has not been able to persuade us that the aforesaid decision needs reconsideration or that the principle laid down in this decision is not applicable to the present case.

3. Regarding question No. 2, the undisputed facts are these : The assessee is a Hindu undivided family. It sold certain shares in companies to its individual members including the karta and debited its profit and loss account with a sum

of Rs. 3,90,750 under the head "loss on sale of shares". In computing the income of the family the Income Tax authorities disallowed this loss as being a capital loss.

4. The Tribunal found that the assessee was not a dealer in shares and that the said shares of Jaswant Sugar Mills Ltd. were acquired as an investment by the assessee-family. The assessor did not adduce any evidence to show that it sold the shares as stock-in-trade.

5. Admittedly, the shares were held since 1952 and this was the first year in which they were sold. Where the purchase and the sale of shares is a solitary and isolated transaction, the presumption is that it is not in the nature of trade and the burden of establishing that this transaction is in the nature of trade is on him who asserts so. The assessee did not lead evidence to substantiate its claims that the shares were held as stock-in-trade.

6. Sri Khanna, learned counsel for the assessee, relied on the decision of the Supreme Court in *Investment Ltd. Vs. Commissioner of Income Tax, Calcutta*, . There, the assessee-company was formed with the objects, amongst others, of dealing in shares and securities and effected transactions of sale and purchase of shares and securities on a large magnitude. It was in those circumstances the Supreme Court held that the loss resulting in a particular year from sale of securities had to be treated as revenue loss and not capital loss. That decision has no application to the present case inasmuch as the assessee in the present case was not dealing in shares and the sale of shares was a solitary and isolated transaction apart from being in favour of the individual members of the family. It cannot, therefore, be said that the Tribunal's finding that the shares were not stock-in-trade, was without any basis or that the Tribunal failed to record any finding on this point.

7. It was then urged by Sri Khanna that the sale of shares was an adventure in the nature of trade and that the Income Tax authorities should have allowed the loss as a revenue loss in the business. Reliance was placed on the decision in *Rajkishan Prem Chandra Jain Vs. Commissioner of Income Tax*, . There, the assessee was carrying on real estate business. A plot of land belonging to him was acquired by the Government and the compensation paid to him was in excess of the amount which was actually spent by him. The Punjab High Court held that such excess was income in the hands of the assessee and assessable to Income Tax. But in the present case the assessee never claimed deduction of loss on the basis of the sale of shares being an adventure in the nature of trade. The transaction in shares was not in the line of the business of the assessee. Hence, the above decision has no application to the present case.

8. For the reasons stated above, we answer both the questions referred to us against the assessee and in favour of the department. Our answers are as follows:

"1. The assessee was not entitled to depreciation on the 1/6th share in S. B.

Sugar Mills, Bijnor.

2. The Tribunal was justified in holding that the loss of Rs. 3,90,750 arising on sales of shares of M/s. Jaswant Sugar Mills Ltd. was loss of capital nature."

9. The department shall be entitled to its costs which we assess at Rs 200. Counsel's fee is also assessed at the same figure.