

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.11.2015

+ **ITA 91/2002**

COMMISSIONER OF INCOME TAX DELHI-III Appellant

versus

M/S SUN INVESTMENTS LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Mr. N.P. Sahni, Senior Standing counsel
with Mr. Nitin Gulati.

For the Respondent : Mr. Ajay Vohra, Senior Advocate with Ms.
Kavita Jha.

CORAM:

DR. JUSTICE S. MURALIDHAR

MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning a common order dated 20th December, 2001 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in ITA No. 243/Del/2001 and ITA No. 314/Del/2001. ITA 243/Del/2001 was an appeal preferred by the Assessee against a common order dated 3rd October, 2000 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)'], *inter alia*, rejecting the Assessee's appeal against the assessment order dated 29th July, 1994 relating to the assessment

year (hereafter 'AY') 1992-93. ITA No. 314/Del/2001 related to another Assessee namely M/s Nalwa Investments Ltd. and the common order passed by the ITAT insofar as it relates to the said appeal is not a subject matter of the present appeal.

2. This Appeal was admitted on 12th October, 2004 and the following questions of law were framed:-

“1. Whether the Income Tax Appellate Tribunal was right in holding that the sale consideration received by the assessee by transfer of shares and sale of rights entitlement of Partly Convertible Debentures (PCDs) is income from capital gains and not income from business?

2. Whether the Income Tax Appellate Tribunal was right in holding that the assessee had incurred loss on sale of its entitlement to acquire partly convertible debentures and the assessee is entitled to set off the alleged loss from the capital gains/income earned by the assessee?”

3. Briefly stated the relevant facts necessary to address the aforesaid question are as under:-

3.1 The Assessee company is an investment company belonging to the Jindal Group of companies. Jindal Group is mainly engaged in the manufacturing and production of ferrous metals and alloys. Jindal Group

includes investment companies – such as the Assessee – which, *inter alia*, hold and transact in shares of the operational companies of the Group.

3.2 The Assessee filed its return of income for the AY 1992-93 returning an income of Rs.26,14,312/- (twenty six lacs fourteen thousand three hundred twelve) and also claiming a carry forward of short term capital loss of Rs.48,84,176/- (forty eight lacs eighty four thousand one hundred seventy six). The return was picked up for scrutiny and a notice under Section 143(2) of the Act was issued to the Assessee. The Profit and Loss Account of the Assessee disclosed a profit of Rs.4,71,16,041/- (four crores seventy one lacs sixteen thousand forty one). In the aforesaid profits, the Assessee had reduced profits on sale of certain shares held by it in other companies which the Assessee claimed to be capital assets. The Assessee had also claimed loss on account of renunciation of rights to subscribe to PCDs.

3.3 At the material time, the Assessee was one of the shareholders of Jindal Strips Limited (hereafter 'JSL'). The Assessee reflected the shares held in JSL as stock-in-trade and had valued the same at cost or market price whichever was less. According to the Assessee, its board of directors decided to retain the shares on a long term basis and consequently passed a

resolution on 4th April, 1991 that all shares held by it should be treated as investment/capital asset.

3.4 During the financial year relevant to AY 1992-93, JSL announced a rights issue of partly convertible debentures (hereafter 'PCDs') of Rs.360/- each. Out of the aforesaid sum, Rs.120/- per PCD was payable on application and the balance Rs.240/- was payable on allotment. One part of the PCD of the face value of Rs.100/- was to be automatically converted into one share of Rs.10/- each at a premium of Rs.90/- after six months of allotment.

3.5 During the year, the Assessee sold 1,25,000 (One lac twenty five thousand) shares of M/s Saw Pipes Ltd. for a consideration of Rs.1,33,90,720/- (One crore thirty three lacs ninety thousand seven hundred twenty). According to the Assessee, the cost of acquisition of those shares was Rs.3,13,500/- (three lacs thirteen thousand five hundred). Accordingly, the Assessee reflected a capital gain of Rs.1,30,77,220/- (one crore thirty lacs seventy seven thousand two hundred twenty) and after making adjustments under Section 48(2) of the Act, the Assessee declared a capital gain of Rs.91,43,554/- (ninety one lacs forty three thousand five hundred fifty four). In addition, the Assessee also declared profit on sale of 2,500

shares of Reliance Industries and 30,000 shares of JSL amounting to Rs.75,96,250/- (seventy five lacs ninety six thousand two hundred fifty).

3.6 The Assessee claimed that it sold its entitlement to subscribe to 2,12,000 PCDs at the rate of Rs.98/- each aggregating to Rs.2,07,76,000/- (two crores seven lacs seventy six thousand). These rights were sold to M/s Gagan Trading Co., another company belonging to the Jindal Group. Admittedly, the cost of acquisition of shares of JSL on the basis of which the Assessee was entitled to subscribe to PCDs were acquired at the price much below Rs.98/-. Nonetheless, the Assessee claimed a loss of Rs.42/- per PCD on the transaction. This was computed by taking the cost of acquisition of the rights to subscribe to PCDs as a diminution in the quoted value of JSL shares; JSL shares were quoted at a cum-right price of Rs.615/- as on 20th December, 1991 and an ex-right price of Rs.475/- as on 24th December, 1991. It appears that the Assessee had claimed the said loss at Rs.2,16,23,980/- (two crores sixteen lacs twenty three thousand nine hundred eighty). The Revenue, in its appeal, has mentioned the Assessee's claim of short term loss as Rs.1,68,59,360/- (one crore sixty eight lacs fifty nine thousand three hundred sixty), however, that appears to be erroneous.

3.7 Thus, the Assessee claimed that it suffered a diminution of Rs.140/- in the value of shares of JSL. It appears that the rights to subscribe to 2,12,000 PCDs arose in respect of 3,02,857 shares of JSL held by the Assessee. Accordingly, the Assessee calculated the cost of acquisition of the rights at Rs.4,23,99,980/- (four crores twenty three lacs ninety nine thousand nine hundred eighty) (i.e. $3,02,857 \times \text{Rs.}140/-$). Since the said rights were sold at an aggregate value of Rs.2,07,76,000/- (two crores seven lacs seventy six thousand) ($2,12,000 \times \text{Rs.}98/-$), the Assessee claimed a capital loss of Rs.2,16,23,980/- (two crores sixteen lacs twenty three thousand nine hundred eighty).

4. It appears that the Assessee sought to set off the aforesaid loss of Rs.2,16,23,980/- from the capital gains of Rs.1,67,39,804/- declared by it from sale of shares of M/s Saw Pipes Ltd. (Rs.91,43,554/-) and shares of Reliance Industries and JSL (Rs.75,96,250/-), thus, claiming a carry forward of loss of Rs.48,84,176/-.

5. The AO as well as the CIT(A) had noted that the principal transactions in question were amongst related companies and the funds from the said transactions were also transferred to related companies. The AO as well as the CIT(A) were of the view that the transaction in question

was a sham transaction and a device to avoid payment of tax.

6. The present appeal was heard alongwith **Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.:** ITA No.130/2001 and the questions of law framed in present the appeal and in ITA 130/2001 were also common. Further, the learned counsel for the parties contended that the material facts and issues in the present appeal were similar to the issues involved in ITA 130/2001 and a decision in ITA 130/2001 would also be determinative of the questions in the present appeal.

7. Thus, in view of our decision in **Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.:** ITA 130/2001 delivered today, the questions of law are answered in favour of the Revenue and against the Assessee.

8. The appeal is allowed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

NOVEMBER 19, 2015
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