THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.11.2015

\+ **ITA 246/2003**

COMMISSIONER OF INCOME TAX DELHI-II ..... Appellant

versus

M/S MANSAROVER INVESTMENTS LTD. ..... Respondent

<u>Advocates who appeared in this case:</u>

For the Appellant : Mr. N.P. Sahni, Senior Standing counsel.
For the Respondent : Ms Kavita Jha and Ms Mehak Gupta.

CORAM:
DR. JUSTICE S. MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

<u>JUDGMENT</u>

<u>VIBHU BAKHRU, J</u>

1. The Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning an order dated 13th January, 2003 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in ITA No. 1177/Del/2001. The said appeal (being ITA No. 1177/Del/2001) was preferred by the Assessee against an order dated 31st January, 2001 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)], *inter alia*, rejecting the Assessee's appeal against the assessment order dated 31st March, 1992 relating to the assessment year (hereafter 'AY') 1992-93.

2. This Appeal was admitted on 10th May, 2006 and the following questions of law were framed:-

> "1. Whether the I.T.A.T. 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 (PCD's) is income from capital gains and not income from business?
>
> 2. Whether the I.T.A.T. was right in holding that the assessee had incurred loss on sale of its entitlement to acquire partly convertible debentures & the assessee is entitled to set off the alleged loss from the capital gains/income earned by the assessee?"

3. The Assessee had sold 60,000 equity shares of Jindal Strips Limited (hereafter 'JSL') and declared a short term capital gain of Rs.1,30,60,000/-. In addition, the Assessee had also sold 2,600 shares of M/s Jindal Ferro Alloys Ltd. and had declared a long term capital gain of Rs.2,49,760/- after claiming deduction under Section 48(2) of the Act. The Assessee also held shares of Jindal Iron and Steel Company Ltd. (hereafter 'JISCO') on the basis of which the Assessee was entitled to subscribe to partly convertible debentures (PCDs) of JISCO pursuant to rights issue floated by JISCO during the year. The Assessee renounced these rights in favour of JSL for a consideration of Rs.30/- per PCD, that is, for an aggregate consideration of Rs.32,28,750/-.

4. At the material time, the Assessee had reflected the shares held by it in various companies as stock-in-trade and valued the same at cost or market price. According to the Assessee, its board of directors had decided to retain the shares on long term basis and consequently passed a resolution on 4th April, 1991 resolving that all shares held by the Assessee be transferred from stock-in-trade to investment in the balance sheet as on 31st March, 1992.

5. The Assessee claimed that it had suffered a loss on account of renunciation of rights to subscribe to PCDs of JISCO. According to the Assessee, the cost of acquisition of the said rights was Rs.200/- per PCD which was renounced at Rs.30/- per PCD. The Assessee sought to set off the loss against the capital gains declared by it.

6. The AO as well as the CIT(A) held that the transaction of renunciation of PCDs was a sham transaction and executed only for the purpose of purchasing the notional loss. It was also noted that the funds realized by the Assessee from the sale of shares was also transferred to related companies.

7. At the outset, the learned counsel for the parties stated that the

material facts and issues were similar to that in ***Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.***: **ITA No.130/2001** and the decision in that case would also be determinative of the questions in the present appeal.

8. 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.

9. 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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