ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

GA No. 2715 of 2014
ITAT No. 132 of 2014

JOINT COMMISSIONER OF INCOME TAX,
KOLKATA - XVII, KOLKATA

Versus

SHRI BAJRANGLAL CHOWDHURY

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 7th January, 2015.

For Appellant	:	Mr. S. B. Saraf, Advocate
For Respondent	:	Mr. R. Bharadwaj with Mr. Bhaskar Sengupta, Advocates

The Court : The appeal is directed against a judgment and order dated 13th March, 2014 by which the learned Income Tax Appellate Tribunal dismissed an appeal preferred by the revenue.

The assessing officer held that the transaction in shares undertaken by the assessee was in the nature of a business transaction and not investment. Aggrieved by the order of the assessing officer, an appeal was preferred by the assessee which was allowed by the CIT (A) holding that the transaction was really in the nature of an investment. The appellate authority discussed reasons as to why was the transaction in the nature of an investment. The revenue preferred an appeal. The learned Tribunal agreeing with the appellate authority dismissed the appeal. The revenue has once again come up in appeal before us.

Mr. Saraf, learned advocate appearing for the revenue, strenuously submitted that the finding of the learned Tribunal is perverse. The Tribunal ignored the fact that the shares allegedly purchased in July were not taken delivery of till December nor was any payment made when the purchase was allegedly made in the month of July. This submission of Mr. Saraf evidently is based on misreading of the evidence. It would appear from the assessment order that payment was made for the shares in the month of July itself through bill accommodation facility.

Mr. Saraf relied upon a judgment in the case of Commissioner of Income Tax v s. Sutlej Cotton Mills Supply Agency Ltd., reported in (1975) 100 ITR 706. He drew our attention to the following finding recorded by the Apex Court:

> " *The finding of the High Court that the clauses of the memorandum of association, viz., clauses 10, 12, 13, 28 and 29 do not authorize the company to acquire and sell shares as business has no relevance in view of the aforesaid resolution of the assessee and of the fact that it had been dealing in shares in a commercial spirit as is evident from its claim for loss in dealings in the shares of M/s. Titaghur Paper Mills Ltd. and devaluation of shares of M/s. Pilani Investment Corporation on the basis that they had fallen in value.*
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> *Secondly, the Tribunal said that from 1947 to 1956, no dividend had been declared by the rayon company and that the money which went into the purchase of these shares was borrowed by the assessee. In other words, the view of the Tribunal was, it was with borrowed funds that the assessee purchased the shares. It is no doubt true that there was no evidence to show that the money was*

specifically borrowed for the purpose of buying shares. But there was evidence before the Tribunal for its finding that the liabilities of the assessee exceeded its assets. The finding, therefore, that the shares were purchased with borrowed funds on which the assessee was paying interest, was a finding supported by evidence. The reasoning of the Tribunal that it is most improbable that the assessee would be investing borrowed money on which interest would have to be paid in shares which yielded no dividend was correct. We cannot say that this was not a relevant circumstances for the Tribunal to take into consideration for coming to the conclusion that the transaction was an adventure in the nature of business."

It would appear from the aforesaid finding that the Apex Court was of the opinion that the view formed by the Tribunal was a possible view in the facts and circumstances of the case. The judgment is not, however, an authority for the proposition that since purchase was made by borrowed funds, it is bound to become a business *transaction.* The Tribunal in that case had taken a possible view. Therefore, the Apex Court did not interfere.

No other submission was made. We are of the opinion that the view taken by the learned Tribunal in this case is also based on evidence and is a possible view. There is, as such, no reason why the High Court should interfere.

For the aforesaid reasons, we refuse to admit the appeal, which is, accordingly, dismissed.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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