

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF FEBRUARY 2008

PRESENT

THE HON'BLE MR. JUSTICE DEEPAK VERMA

AND

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

I.T.A. No.219 OF 2003

BETWEEN:

Deputy Commissioner of
Income Tax,
Central Circle - 2(1),
BANGALORE.

.. APPELLANT.

(By Sri.M.V.Sesbachala, Adv.)

AND:

M/s. BPL Sanyo Finance Ltd.,
No.13, Kasturba Road,
Annex Building,
BANGALORE.

.. RESPONDENT.

(By Sri. S.Parthasarathi, Adv.)

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This I.T.A. filed under Section 260-A of the Income Tax Act, 1961 arising out of order dated 31.01.2003 passed in ITA No.454/BANG/2002 for the assessment year 1998-99 praying to allow the appeal and set aside the order passed by the Income Tax Appellate Tribunal, Bangalore in ITA No.454/BANG/2002 dated 31.01.2003.

This I.T.A. coming on for Final Hearing this day, **Deepak Verma. J.**, delivered the following: 

J U D G M E N T

Heard Sri. M.V.Seshachala, learned counsel for the appellant and Sri.S.Parthasarathi, learned counsel for the respondent.

2. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter shall be referred to in short as "the Act") is at the instance of Revenue against the order dated 31.01.2003 passed by the Income Tax Appellate Tribunal, Bangalore Bench "A" in respondent's ITA No.454/BANG/2002 for the assessment year 1998-99. The following substantial questions of law arise for consideration of this Court, which are reproduced hereinbelow:

1. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the loss on account of forfeiture of share application money of the assessee to the tune of Rs.32,50,000/- is a short term capital loss for the assessment year 1998-99?
2. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the forfeited share application money of the assessee to the tune of Rs.32,50,000/- claimed by the assessee as short term capital loss for the assessment year 1998-99 for obtaining the equity shares of IDBI Limited, is within the meaning of Section 2(47) read with Section 45 of the Income Tax Act, 1961?



3. Short facts necessary for the disposal of the appeal are mentioned hereinbelow:

"The respondent - company is engaged in non banking financial business etc. It had applied for allotment of one-lakh equity shares of IDBI Limited, in response to the public issue of shares by the Investee Company. The assessee remitted the share application money of Rs.32,50,000/-, along with its application for allotment of one-lakh equity shares to the assessee. The Investee Company i.e., IDBI Limited allotted in all 89,200 shares to the assessee as against one-lakh equity shares applied for by it. Thereafter the Investee Company, IDBI Limited, after appropriating share application money, against their allotted share of 89,200, called upon the assessee to pay the balance sum of Rs.83,46,000/- for issuance of shares in its favour.

Despite sending of several notices by IDBI Limited to the assessee for remitting the balance and outstanding allotment money, the assessee did not pay the same. Accordingly as per the terms of the issue, the



non-payment of allotment money rendered the allotted shares and the money paid as share application money liable for forfeiture by the Investee Company. Thus IDBI Limited cancelled the allotment and forfeited the share application money of Rs.32,50,000/- as deposited by the assessee earlier towards share application money. It resulted into loss of Rs.32,50,000/- to the assessee on account of such forfeiture which was claimed by it as short term capital loss in its return.

The Assessing Officer, while framing the assessment had disallowed the same. The main reason for disallowance, was that the allotment of shares were to be made only after receipt of the balance amount and on the date of forfeiture, shares in question were not yet allotted to the assessee. The assessee had only received an allotment letter-cum-advice requiring it to deposit the balance amount for allotment of shares. It was further held that allotment of share was to be made only after the receipt of the amount which ultimately was not paid by the assessee, thus according to him the assessee did not get any right in the shares of IDBI Limited. Since it held that the assessee did



not get any right in the shares, therefore the relinquishment thereof did not arise. It was also held that there was no transfer involved in the instant case consequent to the forfeiture of share application money in terms of provisions of Section 2(47) read with Section 45 of the Act. The Assessing Officer was therefore constrained to disallow the short term capital loss as claimed by the assessee."

5. Feeling aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) sustained the action of the Assessing Officer and reiterated the same finding.

6. The assessee was therefore constrained to file further appeal before the Income Tax Appellate Tribunal. The Tribunal has allowed the appeal of the assessee holding in its favour, thus giving rise to the Revenue to prefer this appeal under Section 260-A of the Act.

7. Record shows that even though the assessee was informed by IDBI Limited to deposit balance amount of the share application

money from time to time. But it did not take any action in this regard. Ultimately vide letter dated 20.07.2000, IDBI Limited, cancelled the allotment of shares to assessee and directed that the amount of the share application money stands forfeited with effect from 17.08.2000, as on or before 17.08.2000 assessee had failed to deposit the balance amount of Rs.83,46,000-00. In this view of the matter, the amount of Rs.32,50,000/- deposited towards share application money is forfeited.

8. To decide the question of law as formulated herein above, it is necessary to look into the definition of transfer as appearing in Section 2(47) of the Act, relevant portion thereof is reproduced herein below:

2(47) "transfer", in relation to a capital asset, includes,-

- (i) the sale, "exchange" or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or

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- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment;

9. The Tribunal has considered the meaning of the word "allotment", as appeared in the guide to Companies Act, 1956. The same is reproduced hereinbelow:

"What is termed 'allotment' is generally neither more nor less than the acceptance by the company of the offer to take shares. To take the common case, the offer is to take a certain number of shares or such a less number as may be allotted. That offer is accepted by the allotment either of the total number mentioned in the offer or a less number, to be taken by the person who made the offer. This constitutes a binding contract to take that number according to the offer and acceptance. To my mind there is no magic whatever in the term "allotment" as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. An allotment is an



appropriation, not of specific shares, but of a certain number of shares."

The above passage has been quoted in the commentary of the Companies Act mentioned herein above from a decision in Florence Land and Public Works Co., in re (1885) 29 Dh D 421 at 426.

10. On account of the aforesaid fact that the binding contract existed between assessee and the Investee Company, the irresistible conclusion that can be drawn on the aforesaid facts and circumstances is that as soon as allotment is made, the assessee would be deemed to have acquired a right in such shares even if the call monies or the full face value of the shares has not been paid. Thus in a case where only share application money is paid and balance is yet to be paid on actual allotment of shares, the holder of such allotment would be recognized as a member of the Investee Company. Thus it cannot be said that the assessee had not acquired right in such shares on account of its failure to deposit the balance amount for allotment of shares. The aforesaid view would attract the provisions of Section 2(47) of the Act. The

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extinguishment of any rights therein as appeared in Section 2(47) of the Act, covers every possible transaction resulting in the destruction, annihilation, extinction, termination, cessation or cancellation, by satisfaction or otherwise of all or any of the bundle of rights whether qualitative or quantitative, which the assessee has in a capital asset whether or not such an asset is corporeal or incorporeal.

11. In the case on hand consequent to the assessee's default in not paying the balance of money on allotment, its right in the shares stood extinguished on its forfeiture by the Investee Company. The loss suffered by the assessee, i.e., non-recovery of share application money is consequent to the forfeiture of its right in the share and the same is to be understood to be within the scope and ambit of transfer. In this view of the matter, the Tribunal was justified in holding that it would amount to short term capital loss to the assessee. No other point was urged before us.

12. With regard to the extinguishment of any rights, we may profitably refer to the judgment of the Supreme Court in the case



of Commissioner of Income Tax Vs. Mrs. Grace Collis and Others
[(2001) 248 ITR 323]. In the said case, it has been held as under:

"It is true that the definition of transfer in Section 2(47) of the Act is an 'inclusive' definition and therefore, extends to events and transactions which may not otherwise be 'transfer' according to its ordinary, popular and natural sense."

13. For the aforesaid reasons, we are of the considered opinion that the questions posed have to be answered in favour of the assessee and against the Revenue. The appeal accordingly stands disposed of.

Sd/-
Judge

Sd/-
Judge

AGV.