

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN
and
The Honourable Mr.Justice K.RAVICHANDRA BAABU

TC(A). Nos. 899 and 900 of 2005

M/s. Premier Synthetic Industries
'Premier House' 185, A.T.D Street
Race Course Coimbatore 641 018 ... Appellant in both appeals

-vs-

The Income Tax Officer
Ward II (7)
Coimbatore ... Respondent in both appeals

Tax Case Appeals against the order of the Income Tax Appellate Tribunal, D Bench,
Chennai, dated 28.2.2005 passed in I.T.A.Nos.1570 and 1571/ Mds/95 respectively.

For Appellant : Mr.C.V.Rajan

For Respondent : Mr.T.Ravikumar
Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J)

The assessee has preferred these appeals as against the order of the Tribunal relating to assessment years 1987-88 and 1988-89. The above Tax Case (Appeals) are admitted on the following common substantial question of law:-

"Whether on the facts and circumstances of the case, the Tribunal was right in confirming the disallowance of loss incurred by the appellant arising from purchase and sale of shares?"

2. The assessee herein is a partnership firm. The return originally filed by the assessee was accepted under Section 143(3) of the Income Tax Act. Subsequently, while scrutinising the assessment for the assessment year 1988-89, it was found that the assessee had claimed short

term capital loss on sale of shares for the assessment year 1987-88, which was identical to that of the assessment year 1988-89. Accordingly, the assessment for assessment year 1987-88 was sought to be reopened under Section 147 of the Income Tax Act. The assessee went on appeal before the Commissioner of Income Tax (Appeals), who found the modus operandi adopted to purchase the shares of the Premier Mills Limited and subsequent sale of the same to a sister concern of the Premier Mills Limited, were all colourable device, as such, the claim of capital loss was rejected. Aggrieved by the same, the assessee went on appeal before the Income Tax Appellate Tribunal, which remanded the matter back to the officer for a fresh consideration based on the records. As far as the assessment year 1988-89 is concerned, the facts are one and the same. It is seen from the order of the Assessing Authority that after remand order by the Tribunal, the assessee was called upon to produce the records regarding the transactions of purchase of shares of Premier Mills Limited from Unit Trust of India, which were subsequently sold by the assessee to the sister concern by name M/s. Belathur Investments Private limited.

3. A perusal of the order of the Income Tax Officer shows that initially the assessee had 54390 shares in M/s. Premier Mills Limited in the name of Capricorn General Finance Private Limited, a partner of the assessee firm. Subsequently, the assessee purchased the shares of Premier Mills Limited from the Unit Trust of India at a cost of Rs.30/- per share. The shares purchased at Rs.30/- were subsequently sold within a short span of time to M/s. Belathur Investments Private Limited at Rs.8.50 and as on 1.9.1988 the total number of shares held by the company was once again restored to 54390 shares only. It is a matter of record that the shares of the Premier Mills Limited at the time of purchase of shares were quoted at Rs.8.50 only. It is seen from the assessment order that Jagadish Chandran, who happened to be the Managing Director of Premier Mills Limited had an agreement with Unit Trust India, which held 200,000 13.5% secured convertible redeemable debentures of Premier Mills, 30% of the face value of each of such debenture converted into two equity shares of the company of the face value of Rs.10/- each at the issue price of Rs.15/- each. By the said agreement, Jagadish Chandran agreed to purchase the shares at the value of Rs.30/- either for himself or for his nominees. Thus, in terms of the agreement, the assessee stated to have purchased shares at the value of Rs.30/- when the price of the share was between Rs.8.25 and Rs.8.50 per share and not Rs.30/- or Rs.39.50 at which they were purchased from Unit Trust of India. On analysis of the materials placed before the Assessing Officer, it was found that except the letters exchanged between Premier Mills Limited and Unit Trust of India, there was absolutely no correspondence exchanged between the assessee and the Unit Trust of India/ Premier Mills Limited/ Jagadish Chandran. On the other hand, the letter exchanged between the Premier Mills and the Unit Trust of India would indicate that it was the Premier Mills who were under compulsion to buy back the shares held by the Unit Trust of India. Thus, the shares were ultimately transferred by the appellant to the closely held company Belathur Investments Private Limited, wherein, the Managing Director of this company Sabitha Chandran is the wife of Jagdish Chandran, the Managing Director of Premier Mills Limited, who had entered into an agreement with Unit Trust of India for the purchase of shares. It was also pointed out that the shares purchased by the assessee had also been fully paid for by Premier Mills Limited by adjusting the payments against the outstanding dues to the assessee. In the face of the entire

correspondence on the purchase of shares from the Unit Trust of India being in the name of the Premier Mills Limited, there being no involvement of the assessee in the negotiation process, the Income Tax Officer came to the conclusion that the assessee was used as a medium for transferring the shares at the real market value to the nominee of the Premier Mills Limited, so that, the company remained under the effective control of its own people and the assessee could reduce its tax liability on the substantial income that had been earned during the assessment years 1988-89 by adjusting the loss in share transaction. The Assessing Authority held that there was absolutely no compulsion on the part of the assessee to acquire the shares at a fancy price from the Unit Trust of India. The shares were not acquired with the view to hold them as investments or as stock-in-trade in the ordinary course of share dealings. The Officer however pointed out that the assessee firm is a one of the nominees through its newly appointed partner M/s. Capricon General Finance Private Limited, which was admitted as a partner by the assessee firm for supervising the smooth functioning of the purchase and sale of the shares. It was further pointed out that the said Capricon General Finance Private Limited did not figure in any of the financial statement filed on behalf of the assessee firm, which clearly pointed out that the said company had withdrawn itself as a partner from the assessee firm subsequently after acting for the limited purpose. The Officer however pointed out that during the period, Premier Mills Limited decided to pay a turnover incentive to the assessee firm, for which there was no agreement. The turnover incentive was paid to the assessee firm so that the assessee firm will be able to withstand the imperative losses involved in the purchase of the shares of M/s. Premier Mills Limited from Unit Trust of India. The Officer pointed out that the incentive for the turnover was given to the assessee firm only to make good the loss resulting from the share transaction. The turnover incentive scheme was withdrawn after the share transactions were completed. Thus, on a totality of the facts seen, the Officer held that the entire transactions could not be said to be the part of the business activity so as to make it a revenue loss or even a capital loss. In fact he observed that the assessee had purchased the loss and hence, could not be allowed under any of the provisions of the Income Tax Act, 1961. The Officer who passed the order had considered every aspect of the transactions in detail and commented the manner in which he dealt with the whole issue.

4. Aggrieved by the assessment, the assessee went on appeal before the Income Tax Appellate Tribunal. By a common order, the Tribunal once again confirmed the views of the Commissioner of Income Tax (Appeals), who confirmed the order of assessment. Aggrieved by the order of the Tribunal, the assessee has filed the above appeals.

5. A perusal of the order of the Tribunal shows that Jagadish Chandran, the Managing Director of the Premier Mills Limited had an agreement in his individual capacity with the Unit Trust of India to repurchase the shares of Premier Mills Limited, by using the name of the assessee's firm. Jagdish Chandran purchased the shares at highest price than the market price. Then the shares were subsequently sold to Belathur Investments Private Limited, a group concern of M/s. Premier Mills Limited, wherein, Savita Chandran, who is the wife of Jagdish Chandran, Managing Director of Premier Mills Limited, is the Managing Director. Going by the above said facts, the Tribunal pointed out that it cannot be said that the assessee's firm repurchased the shares as per the agreement. Secondly, the Tribunal pointed out that there was

no agreement between the assessee firm and Unit Trust of India to repurchase the shares of Premier Mills Limited. In order to escape from the provisions of Section 77 of the Companies Act, Premier Mills Limited utilised the services of assessee's firm to purchase its own shares indirectly. Thus, when the market price of the shares was at Rs.8.50 per share at the time of repurchase, no ordinary prudent business man would agree to purchase the shares at higher price, triple the one quoted in the open market. Thus, the Tribunal found, as a matter of fact, the intention to repurchase the shares was evident to keep the control over Premier Mills Limited by the said company itself. As regards payment of compensation or commission, the Tribunal pointed out that the same was subsequently withdrawn after the transaction was over. Thus, the Tribunal confirmed the view of the authorities below that there was no pre existing agreement between the assessee and the Unit Trust of India as regards the purchase of shares at highest price which stated to have been purchased. The Tribunal further held that there was no material to show as regards flow of funds from the assessee for the purchase of shares and that the transactions were genuine transactions. Based on these materials, the Tribunal rejected the appeal.

6. Even though learned counsel for the assessee strongly placed reliance on the agreement between the Unit Trust of India and Jagdish Chandran and canvassing the issue that the transaction is genuine and straight transaction, we do not find any justifiable ground to accept the said contention. On going through the orders of the authorities below, we have no hesitation in confirming the finding rendered by the Tribunal which is based on records.

7. As already pointed out in the preceding paragraph, the course of transaction that had gone in, clearly pointed out that the Premier Mills Limited merely used the assessee company as a special vehicle for the purpose of achieving, what it would not be possible for it to achieve in a legal way. It was found that as Premier Mills Limited could not purchase its own shares and in order to circumvent Section 77 of the Companies Act, it decided to repurchase the shares through the assessee herein, which subsequently sold the same to the sister concern, wherein the spouse of Managing Director of Premier Mills Limited was a Managing Director of the sister concern. It is not denied by the assessee as to the absence of correspondence between the assessee and the Unit Trust of India as regards the price agreed upon at Rs.30/- per share, particularly, when the price of the share was quoted at Rs.8.50 paise as on the date of the sale to the sister concern. There are no special reasons assigned for buying the shares at such a higher price when it had decided to sell the same within a short span of time at Rs.8.50 paise.

8. In the absence of any material explained as regards the repurchase of shares at Rs.30/- per share and subsequently sold it at Rs.8.50 paise, we do not agree with the assessee's contention that these are all genuine transactions.

9. Secondly, there are hardly any material to show that the funds for the purchase of these shares really went from the assessee company. Thus, as pointed out by the Assessing Authority in its order, as confirmed by the Appellate Authority, the entire transactions are lacking in genuineness for this Court to accept.

10. We have no hesitation in confirming the order of the Tribunal, thereby, the appeals filed by the assessee stand dismissed. No costs.

bg

To

1.The Income Tax Officer, Ward II (7) Coimbatore

2. The Income Tax Appellate Tribunal, D Bench,
Chennai