

RAMESHWAR PRASAD BAGLA

v.

COMMISSIONER OF INCOME-TAX, U.P., LUCKNOW

September 27, 1972

[K. S. HEGDE, P. JAGANMOHAN REDDY, I. D. DUA AND
H. R. KHANNA, JJ.]

Indian Income Tax Act, 1922, Sec. 66(2)—Powers of High Court and Supreme Court not appellate but only advisory.

Sec. 10, Sec. 12, (b) whether surplus realised on the sale of shares originally bought for the control of the Company and obtaining managing agency, is liable to tax as capital gains or as profit on sale of shares.

The appellant-assessee is a partner in A. & Co. Managing Agency of one textile Mill was assigned by the Managing Agents (S. & Co.) to A. & Co. for consideration of buying large number of shares and cash. The appellant bought 31,250 shares. An equal number of shares was transferred in his favour by his brother. In 1946, the appellant sold 43,700 shares resulting in the profit of Rs. 1,51,927. Before the income Tax Officer the appellant's contention was that the surplus was in the nature of capital gains. The I.T.O. however, held that the amount was liable to taxation u/s 10 of the Act as profits on the sale of shares. The tribunal remanded the case to the I.T.O. The appeal along with the remand report was placed before the Tribunal for hearing. After carefully considering all the evidence the Tribunal held that the shares were purchased not as stock-in-trade but for securing the managing agency and control of the company. The Tribunal further held that the surplus on sale of shares is not income which is liable to income tax under sec. 10. Thereafter, the Tribunal, on the High Court's direction drew up a statement of case u/s 62 (2). The High Court reversed the findings of the Tribunal and held against the appellant.

HELD : There was enough material and evidence referred to by the Tribunal while recording its finding that the shares in question had been purchased by the assessee with a view to acquire the managing agency and control of the textile mill and that the shares did not constitute stock-in-trade of the assessee. It is for the Tribunal to decide the question of fact and the High Court in a reference u/s 66 of the Act cannot go behind the Tribunal's finding of fact. The High Court can only lay down the law applicable to the facts of the case found by the Tribunal. The High Court and the Supreme Court, in an appeal against the judgment of the High Court, in a reference u/s 66 of the Act are not constituted courts of appeal. These courts only exercise advisory jurisdiction in such references. Only in case where the finding is not based on any relevant evidence or is based on conjectures or suspicion, a question of law is raised and interference with the finding of facts is permissible. The High Court was not justified in setting aside the finding of fact in the instant case. [457 C]

On facts we are of the opinion that the profit made by the sale of shares constituted capital gain chargeable to income tax u/s 12 (b). Indeed it was the prayer of the assessee himself in his letter dated March 30, 1949.

Ramnarain Sons (Pvt.) Ltd. v. Commissioner of Income-tax, [1961] 41 I.T.R. 534 relied on.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1718 of 1969.

Appeal by special leave from the judgment and order dated February 20, 1967 of the Allahabad High Court in Misc. Case No. 561 of 1963.

B *Bhagirath Das, H. K. Puri, S. K. Hirajee and S. K. Dhingra*, for the appellant.

S. Mitra, B. D. Sharma and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by

C KHANNA, J. This appeal by special leave is directed against the judgment of Allahabad High Court whereby that court answered the following two questions in a reference made to it under section 66(2) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act) :

D “(i) Whether there was material for the finding that the shares in question were purchased by the assessee with a view to acquire the managing agency and the control of the company or the shares constituted his stock-in-trade ?

E (ii) Even if the shares in question did not constitute the stock-in-trade of the assessee, whether the profit made on the sale of shares did not constitute capital gain chargeable to income tax under section 12-B of the Act ?”

F On the first question, the answer of the High Court was that there was no material for the finding that the shares in question were purchased by the assessee with a view to acquire the managing agency and control of the company. It was further held that the shares constituted the stock-in-trade of the assessee. In view of the above, the High Court held in answer to question No. (ii) that the profits made by the sale of shares could not constitute capital gain chargeable to income tax under section 12-B of the Act.

G The matter relates to assessment year 1947-48, the relevant previous year for which was the Dassera year 2002-2003 corresponding to the period from October 16, 1945 to October 5, 1946.

H Rameshwar Prasad Bagla, the assessee-appellant, is a partner of firm Agarwal & Co. having one-sixteenth share in the firm. Agarwal & Co. consisted of six groups of partners, viz., (1) Morarka Group, (2) Khetan Group, (3) Seksaria Group, (4)

Poddar Group, (5) Bagla Group, and (6) Kantilal Nahalchand. The Bagla Group consisted of the assessee and his brother.

M/s E. D. Sassoon & Co. Ltd. were the managing agents of the India United Mills Ltd. The latter is a public limited company and was engaged in the manufacture of textiles in Bombay. Large blocks of ordinary and deferred shares in the India United Mills Ltd. were held by M/s E. D. Sassoon & Co. Ltd. and its associates. In 1943 there were negotiations between M/s. E. D. Sassoon & Co. Ltd. and one of the partners of Agarwal & Co. Those negotiations resulted in an agreement dated January 26, 1945 under which M/s E. D. Sassoon & Co. Ltd. agreed to assign the managing agency of the India United Mills Ltd. to Agarwal & Co. with effect from December 1, 1943. The consideration for the sale of managing agency was Rs. 57,80,000/-. Agarwal & Co. also agreed to purchase 16,80,000 ordinary shares of the face value of Rs. 10/- each and twenty lac deferred shares of rupee one each of the India United Mills Ltd. The total issued shares of the India United Mills Ltd. were twenty lac ordinary shares of Rs. 10/- each and fifty lac deferred shares of rupee one each. The price for this big lot of shares was fixed at Rs. 3,37,20,000 calculated at the rate of Rs. 16/8/- for an ordinary shares and Rs. 3/- for a deferred share.

At the time when the above mentioned large block of shares of the India United Mills Ltd. was agreed to be acquired, Agarwal & Co. was not in a position to pay for five lac ordinary shares involving an outlay of Rs. 82,50,000. Those five lac shares were purchased by Ramkumar Shivchandrai of Poddar Group of partners in Agarwal & Co. to the extent of three lac shares. The remaining two lac shares were purchased by Khetan Group of partners. The two Groups, viz., Poddar and Khetan Groups, held the five lac shares on behalf of Agarwal & Co. till 1944. The understanding with Poddar and Khetan Groups was that those shares would be taken up by the partners of Agarwal & Co. at the same price. In January 1945 the aforesaid five lac ordinary shares were taken over by Agarwal & Co. from Poddar and Khetan Groups. The assessee appellant was entitled with reference to his holding in Agarwal & Co. to 31,250 shares, i.e. one-sixteenth out of the five lac shares. The assessee's brother was likewise entitled to an equal number of shares out of those five lac shares. The assessee's brother relinquished his rights in the said 31,250 shares in favour of the assessee, as a result of which the assessee obtained 62,500 shares in the India United Mills Ltd. The shares were paid for at the rate of Rs. 16/8/- per share in 1945. These shares had earlier stood in the name of Bombay Trust Corporation which was a company formed by Sasoon Group of companies. After the managing agency of the India United

A Mills Ltd. had been taken over by Agarwal & Co. on December 1, 1943, those shares were transferred between March and August 1944 in the name of various persons residing in Jaipur. Those persons transferred the said shares in favour of the assessee on January 30, 1945. The assessee borrowed rupees ten lacs from Agarwal & Co. in order to pay for the price of those shares.

B Out of 62,500 shares acquired by the assessee, he sold 43,700 shares during the period from April 3, 1946 to July 19, 1946 in seven lots. The rest of the shares remained in the possession of the assessee during the relevant year. The sale of 43,700 shares resulted in a profit of Rs. 1,80,220 to the assessee. The sale proceeds were thereafter utilised by the assessee for purchasing shares of Swadesh Mills Ltd., Kanpur.

C The assessee did not disclose the profit of Rs. 1,80,220 in the turn. In response to a notice issued by the income tax officer, the assessee wrote letter dated March 30, 1949 in the course of which he stated :

D "I have already brought to your honour's notice in the course of assessment proceedings and would like to confirm that I had certain share transaction in which there has been appreciation to the tune of Rs. 1,51,927/1/11. Since it is common ground that the assessee is not dealing in shares as business the said appreciation in capital should have been normally disclosed as capital gain in the return but I regret that the amount could not be shown, so the return already filed may be treated as amended accordingly."

E The amount of Rs. 1,51,927/1/11 referred to in the assessee's letter included the surplus realised as a result of the sale of 43,700 shares of the India Unitd Mills Ltd.

F The income tax officer rejected the plea of the assessee that the profit made by the sale of 43,700 shares of the India United Mills Ltd. was not profit liable to be taxed as such, but was only capital gain. In the previous year with which we are not concerned, the assessee had not been treated as a dealer in shares. The income tax officer held the assessee to be a dealer in shares during the relevant year on the ground that the assessee had entered into share transactions on a very extensive scale. The income tax officer accordingly brought to tax the sum of Rs. 1,80,220 under section 10 of the Act as profits on the sale of shares. On appeal the Appellate Assistant Commissioner held that 62,500 shares were stock-in-trade. The finding of the income tax officer was substantially upheld. Some relief was granted by reducing the taxable income. On further appeal by the assessee

to the Income Tax Appellate Tribunal, the matter was remanded to the income tax officer on May 1, 1954. The income tax officer thereafter submitted a report on June 12, 1956. The appeal along with the remand report of the income tax officer was put up before the Tribunal for hearing. The Tribunal, as per order dated September 26, 1956, held that the excess realised from the sale of shares was not income which was liable to income tax. In coming to this conclusion the Tribunal observed :

"A large number of shares had to be purchased by Agarwal & Co. as a result of an agreement with the Sassoons. Agarwal & Co. was interested in the managing agency of some mills also which came to them as a result of the same agreement. We think that on the facts produced the purchase of the shares by the assessee was not with a view to deal in those shares but with a view to obtain the managing agency and control of the company. It may also be noted here that if the price ruling at the time of the transfer was to be taken into account, perhaps, there is no profit. The profit has been shown as the transfer is made at the price at which the shares were originally sold by the Sassoons. We think that on the facts before the Income-tax authorities the assessee's holding of shares in the India United Mills Ltd. was not the purchase of a stock in trade as held by the Department. We accept the assessee's appeal and direct that the excess realised on the sale of these shares is not income which is liable to income-tax."

An application was thereafter filed on behalf of the respondent for stating a case to the High Court, but that application was rejected. The respondent then approached the High Court under section 66(2) of the Act. The High Court thereupon directed the Tribunal to draw up a statement of case and refer the questions reproduced earlier to the High Court. After the questions were referred, the High Court gave answers to the questions, as mentioned at the commencement of this judgment.

We have heard Mr. Bhagirath Das on behalf of the appellant and Mr. Sukumar Mitra on behalf of the respondent and are of the opinion that the judgment of the High Court cannot be sustained. The question with which the High Court was concerned was whether there was material before the Tribunal for arriving at the finding that the shares in question had been purchased by the assessee with a view to acquire the managing agency and control of the India United Mills Ltd. Perusal of the judgment of the High Court shows that the High Court did not discuss this

- A aspect of the matter. On the contrary, the High Court proceeded straightaway to deal with the matter as if it had itself to arrive at an independent finding on the point as to whether the shares in question had been purchased by the assessee with a view to acquire the managing agency and control of the company. This approach of the High Court was wholly erroneous and not warranted by law. It is for the Tribunal to decide questions of fact, and the High Court in a reference under section 66 of the Act cannot go behind the Tribunal's findings of fact. The High Court can only lay down the law applicable to the facts found by the Tribunal. The High Court and the Supreme Court, in an appeal against the judgment of the High Court given in a reference under section 66 of the Act, are not constituted courts of appeal against the order of the Tribunal. These courts only exercise advisory jurisdiction in such references. The High Court in a reference under section 66 of the Act can, however, go into the question as to whether the conclusion of the Tribunal on a question of fact is based upon relevant evidence. If the High Court finds that there is no such evidence to support the finding of fact of the Tribunal, this circumstance would give rise to a question of law and can be agitated in a reference. It is also well established that when a Tribunal acts on material which is irrelevant to the enquiry or considers material which is partly relevant and partly irrelevant or bases its decision partly on conjectures, surmises and suspicions and partly on evidence, then in such a situation an issue of law arises and the finding of the Tribunal can be interfered with. The finding may also be interfered with if it be found to be so unreasonable that no person acting judicially and properly instructed as to the relevant law could have arrived at it. None of the circumstances justifying interference with the finding of fact of the Tribunal has been shown to exist in this case. In the absence of any such circumstance, the High Court in our view was not justified in interfering with the finding of fact of the Tribunal. The fact that the High Court on appreciation of evidence would have arrived at a conclusion of fact different from that of the Tribunal did not warrant interference with the finding of the Tribunal.
- G The Tribunal in arriving at the conclusion that the purchase of the shares in question by the assessee was with a view to obtain the managing agency and control of the India United Mills Ltd. and that those shares were not purchased as stock-in-trade referred to a number of circumstances. It was found by the Tribunal that the shares in question were out of the lot sold by Sassoons to Agarwal & Co. It was also found that the shares had been transferred to the assessee at the original price at which these shares had been sold by the Sassoons and not at the price which was prevailing at the time of transfer. The Tribunal further
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found that 62,500 shares represented the portion of the assessee in the total number of shares originally purchased by Agarwal & Co. In the light of those findings, the Tribunal recorded its conclusion in the paragraph which has been reproduced earlier. The above conclusion of the Tribunal, in our opinion, was based upon relevant material and could not be interfered with in a reference under section 66 of the Act.

The High Court in arriving at the conclusion that the shares in question had been purchased not with a view to obtain the managing agency but as a stock-in-trade has referred to the fact that the assessee took loan for the purchase of those shares and subsequently transferred 43,700 shares out of 62,500 shares. This circumstance as observed by this Court in the case of *Ramnarain Sons (Pr.) Ltd. v. Commissioner of Income Tax*⁽¹⁾ would not by itself go to show that the purchase of shares was not to facilitate the acquisition of the managing agency. In that case the appellant company was a dealer in shares and securities and carried on business as managing agents for some companies. In order to acquire the managing agency of a textile-mill, the appellant company purchased from Sassoon David and Co., who were the managing agents thereof, 1,507 shares of the mill at Rs. 2,321-8-0 per share at a time when the market price of the shares was Rs. 1,610. The remaining 1,000 shares of the mill held by Sassoon David and Co. were acquired by the directors of the appellant company. Two months later the appellant company sold 400 of those shares at a loss of Rs. 1,78,438. The said loss was claimed as a trading loss. Question arose in this context whether the purchase of shares could be regarded as acquisition of stock-in-trade. Dealing the above question, this Court observed :

“By purchasing the shares which facilitated acquisition of the managing agency, a capital asset was acquired and merely because the managing agency could be utilised for earning profit, the acquisition of the shares which led to the acquisition of the managing agency could not, in the absence of an intention to trade in those shares, be regarded as acquisition of stock-in-trade of the share business. The appellants had undoubtedly purchased the shares of the Dawn Mills with money borrowed at interest, but that circumstance by itself does not evidence an intention to trade in the shares. Nor is the fact that the appellants are dealers in shares and their memorandum of association authorises them to carry on business in shares of any importance in the circumstances of the case.”

(1) [1961] 41 I.T.R. 534.

A It was further observed :

“Subsequent disposal of some out of the shares by appellants could also not convert what was a capital acquisition into an acquisition in the nature of trade.”

B We are, therefore, of the view that the answer given by the High Court to question No. (1) was not correct. In our opinion, there was material for the finding that the shares in question had been purchased by the assessee with a view to acquire the managing agency and control of the India United Mills Ltd. and that the shares did not constitute the stock-in-trade of the assessee.

C So far as the second question is concerned, we find that it is the common case of the parties that if the shares in question are held to be not stock-in-trade of the assessee, in that case the profits made on the sale of those shares would constitute capital gain chargeable to income tax under section 12-B of the Act. Indeed, this is what was prayed for by the assessee in his letter dated March 30, 1949. Looking to the facts also, we are of the opinion that the profit made on the sale of those shares constituted capital gain chargeable to income tax under section 12-B of the Act. We would answer question No. (ii) accordingly.

E We, therefore, accept the appeal, set aside the judgment of the High Court and discharge the answers given by it to the questions referred and substitute the answers indicated above. The appellant shall be entitled to his costs of this Court as well as those in the High Court.

S.B.W.

Appeal allowed.