

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.11.2015

+ **ITA 119/2003**

COMMISSIONER OF INCOME TAX DELHI-III Appellant

versus

SUN INVESTMENTS LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Mr Kamal Sawhney, Senior Standing Counsel
with Mr Raghvendra Singh and Mr Shikhar
Garg.

For the Respondent : Ms Kavita Jha and Ms Mehak Gupta.

CORAM:

DR. JUSTICE S. MURALIDHAR

MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning an order dated 3rd October, 2002 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in ITA No. 244(Del)/2001. ITA No. 244(Del)/2001 was an appeal preferred by the Assessee against a common order dated 3rd October, 2000 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)], *inter alia*, rejecting the Assessee's appeal against an assessment order dated 6th March, 1997 relating to the assessment year (hereafter 'AY') 1994-95.

2. This Appeal was admitted on 6th November, 2006 and the following questions of law were framed:-

“i) Whether the ITAT 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?

ii) Whether the ITAT was right in holding that the assessee had incurred loss on sale of its entitlement to acquire partly convertible debentures and the assessee is entitled to set off the alleged loss from the capital gains/income earned by the assessee?”

3. However, the Assessee had renounced its rights to subscribe to fully convertible debentures (FCDs), therefore, reference to partly convertible debentures in the aforesaid questions of law ought to be read as reference to FCDs.

4. The controversy involved in the present case relates to the loss claimed by the Assessee in respect of renunciation of rights to subscribe to fully convertible debentures (FCDs) of M/s Jindal Iron and Steel Company Ltd. (hereafter 'JISCO'). The Assessee renounced its rights to subscribe to 3,53,450 FCDs at a consideration of Rs.30/- per FCD in favour of companies and individuals pertaining to the Jindal Group. The Assessee

claimed that the cost of acquisition of the rights to subscribe to FCDs was Rs.100/- being the difference in the cum-right price and the ex-right price of equity shares of JISCO. The Assessee, thus, claimed that the cost of acquisition of rights to subscribe to 3,53,450 FCDs was Rs.3,53,45,000/- and, accordingly, claimed that it had suffered a loss of Rs.2,47,41,500/- on account of sale of the rights entitlement to subscribe to FCDs of JISCO.

5. The AO, by an order dated 6th March, 1997, rejected the Assessee's claim by following the assessment order passed in respect of the Assessment Years 1992-93 and 1993-94. The Assessee's appeal against the assessment order dated 6th March, 1997 was heard alongwith the appeal in respect of AY 1992-93 and was disposed of by the CIT(A) by a common order dated 3rd October, 2000. ITAT allowed the Assessee's second appeal by following its earlier decision in the case of Abhinandan Investment Co. Ltd.: ITA No. 5425(Del)/94, decided on 12th January, 2001.

6. The Counsel submitted that the facts and issues involved in the present case are similar to the issues involved in **Commissioner of Income Tax Delhi-III v. M/s Sun Investments Ltd.**: ITA 91/2002 (which was the Assessee's appeal against the ITAT's order in respect of AY 1992-93) and **Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment**

Ltd.: ITA No.130/2001. The learned counsel for the parties submitted that the decision in ITA 130/2001 would also be determinative of the questions of law in the present appeal, which are similarly worded as the questions of law in ITA 130/2001 and ITA 91/2002.

7. Thus, in view of our decision in **Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.:** ITA 130/2001 and **Commissioner of Income Tax Delhi-III v. M/s Sun Investments Ltd.:** ITA 91/2002 rendered today, the questions of law are answered in favour of the Revenue and against the Assessee.

8. The appeal is allowed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 19, 2015
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S. MURALIDHAR, J