

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.11.2015

+ **ITA 174/2003**

COMMISSIONER OF INCOME TAX DELHI-II Appellant

versus

**M/S JINDAL EQUIPMENT LEASING &
CONSULTANCY SERVICES LTD.** Respondent

Advocates who appeared in this case:

For the Appellant : Mr N.P. Sahni, Senior Standing Counsel.

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 20th August, 2002 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in ITA No. 1051/Del/2001. The said appeal (being ITA No. 1051/Del/2001) was preferred by the Assessee against an order dated 31st January, 2001 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)'] whereby the Assessee's appeal against the assessment order dated 31st March, 1992 in respect of the Assessment Year (AY) 1992-93, was

dismissed.

2. The present appeal was admitted on 10th May, 2006 and the following questions of law were framed:-

- “1. Whether the I.T.A.T. was right in holding that the sale consideration received by the assessee by transfer of shares and sale of rights entitlement of partly convertible of partly convertible Debentures (PCDs) is income from capital gains and not income from business?
2. Whether the I.T.A.T. was right in holding that the Assessee had incurred loss on sale of its entitlement to acquire partly convertible debentures & the assessee is entitled to set off the alleged loss from the capital gains/income earned by the assessee?”

3. Briefly stated the relevant facts necessary to address the present appeal are as under:-

3.1 The Assessee company is an investment company belonging to the Jindal Group of companies. Jindal Group is mainly engaged in the manufacturing and production of ferrous metals and alloys. Jindal Group includes investment companies – such as the Assessee – which, *inter alia*, hold and deal in shares of the operational companies of the group. The Assessee furnished the return of Income for the assessment year 1992-93 (Previous year ending 31st March, 1992) declaring an income of Rs.

25,37,330/- and claimed a carry forward of short term capital loss of Rs. 1,41,73,760/- to be set off against future capital gains.

3.2 The Assessee claimed that it has suffered short term loss on the sale of rights entitlement of Partly Convertible Debentures (hereafter 'PCDs') of M/s Jindal Strips Ltd. (hereafter 'JSL') and M/s Jindal Iron & Steel Co. Ltd. (hereafter 'JISCO'). At the material time, the assessee was a shareholder of JSL and JISCO. During the year JSL announced a Rights Issue in terms of which every shareholder was entitled to subscribe to 7 (seven) PCDs for every 10 (ten) equity shares. JISCO also floated a rights issue in terms of which every shareholder was entitled to subscribe to 5 (five) PCDs for 4 (four) equity shares.

3.3 During the year in question the assessee company sold 50,000 equity shares of JSL and 141400 shares of M/s Saw Pipes Ltd which, according to the Assessee resulted in short term capital gains of Rs.1,15,59,800/-. In addition, the Assessee declared income from business and profession of Rs.57,02,340/-.

3.4 During the year, the Assessee also renounced its entitlement to subscribe 78000 PCDs of JSL to Gagan Trading Co. Ltd at the rate of Rs. 98/- per PCD and 1,36,750 PCDs of JISCO to Nalwa Investment limited at

the rate of Rs. 30/- per PCD. Both the purchasers are a part of the Jindal Group.

3.5 According to the Assessee, the cum-right market price of each share of face value of Rs. 10/- of JSL was Rs. 615/- (on 20th December, 1991) and ex-rights price was Rs. 475/- (on 24th December, 1991). Similarly the cum-right price of each share of face value of Rs. 10/- of JISCO was Rs. 625/- and ex right price was Rs. 425/-. On the aforesaid basis, the Assessee claimed that cost of acquisition of rights to subscribe to PCD was the diminution in value of the share holding in JSL and JISCO computed at Rs. 140/- per share of JSL and Rs. 200 per share of JISCO. After accounting for the sale consideration for renunciation of rights to subscribe the PCDs, the Assessee claimed that it had suffered a loss of Rs. 79,56,000 on renunciation of PCDs of JSL and Rs. 1,77,77,500 on renunciation of PCDs of JISCO. After setting off the loss against the gains on sale of shares, the Assessee claimed a net loss of Rs.1,41,73,760/- to be carried forward.

4. The Assessee had held the shares of JISCO and JSL as stock-in-trade in its final accounts as on 31st March, 1991 and had valued the same at cost or market price whichever was lower. According to the Assessee, its board

of directors decided to retain the said shares on long term basis and consequently passed a resolution on 4th April, 1991 that the shares held by it be treated as investment/capital.

5. The AO held that the funds received from sale of shares had been transferred to related companies within the group. The AO further held that the transaction of renunciation of rights were a sham transactions and a device to purchase notional losses.

6. At the outset, the learned counsel for the parties submitted that the material facts and issues in the present appeal were similar to the issues involved in **Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.**: ITA No.130/2001 and a decision in said appeal ITA 130/2001 would also determine the questions in the present appeal.

7. Thus, in view of our decision in **Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.**: ITA 130/2001 delivered 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

S. MURALIDHAR, J

NOVEMBER 19, 2015
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