

\$~28, 29 & 32

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.01.2018

+ **GTA 1/2005**

COMMISSIONER OF GIFT TAX

..... Appellant

versus

M/S JINDAL EQUIPMENT LEASING

..... Respondent

GTA 2/2006

COMMISSIONER OF GIFT TAX

.....Appellant

versus

M/S STAINLESS INVESTMENTS LTD.

..... Respondent

GTA 3/2007

COMMISSIONER OF INCOME TAX DEL

..... Appellant

versus

MANSAROVER INVESTMENT LTD.

..... Respondent

Present: Mr. Deepak Anand, Jr. Standing counsel for appellant.
Mr. Ajay Vohra, Senior Advocate with Ms. Kavita Jha
and Mr. Vaibhav Kulkarni, Advocates for respondents.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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The sole question for consideration in these appeals formulated on 18.11.2005, is as follows:

“Whether the ITAT was correct in law in quashing the assessment framed by the Assessing Officer under Section 16 (1) of the Gift Tax Act on the ground that condition precedent for reassessment of the proceedings under the said provision was not satisfied?”

2. The necessary facts in this case are that the assessee (M/s Jindal

Equipment Leasing & Consultancy Services Ltd) held shares in Jindal Strips Limited (JSL). Similarly, Stainless Investments Ltd. and Mansarovar Investment Ltd (the appellants in GTA 2/2006 and GTA 3/2007)) also held shares. The JSL made an announcement, issuing Partly Convertible Debentures (PCD). According to the scheme, each of its shareholder was entitled to one right share valued at a face value of ₹10/- (at a premium of ₹40/-) and a non-convertible portion, at ₹60/-. The non-convertible portion could, however, be sold to M/s. Citibank at a discounted rate of ₹38/-. The assessee renounced its rights and obtained consideration therefor. They also claimed losses on account of the difference between the material value shown by them (of the rights issue) and the consideration received by them. The Assessing Officer (AO), while considering the income tax returns, held that the transaction was sham and proceeded to disregard the claim for capital loss. However, the assessment was concluded on the basis that the amounts received were in fact business receipts. The assessee's appeals before the CIT(A) and ultimately to the ITAT were successful. The Revenue appealed to this Court. By a judgment (*Commissioner of Income Tax Vs. Jindal Equipment Leasing & Ors.* ITA 174/2003 and connected cases), the Court reversed the findings of the ITAT.

3. In the meanwhile, Gift Tax Officer formed an opinion that the renouncement of the right issue by the assessee was for inadequate consideration and therefore, amounted to a notional or deemed gift under Section 4(1)(a) of the Gift Tax Act. Notice was issued on the basis that by virtue of second explanation to Section 16(1), failure to

file returns, empowered the tax authorities to assess the alleged omission. Taking clue from its order made in the income tax proceedings, the ITAT reversed the stand of the AO. It is in this background that the Revenue urges that the notice under Section 16 in the present case is valid.

4. Apart from relying upon the findings of this Court in *Commissioner of Income-tax, Delhi Vs. Abhinandan Investment Ltd.* (2015) 63 taxmann.com 263 (Delhi), learned counsel for the Revenue submits that the ITAT proceeded on an erroneous assumption that its findings with respect to the nature of the transaction (i.e. as sham) absolved the assessee from any gift tax liability. It is also urged that the ITAT fell into error in placing too much importance on the facts that the cost of the shares in this case was determined on the basis of a transaction that took place after the actual sale of shares in this case.

5. Learned counsel relied upon the judgment of Supreme Court in *Reva Investment Pvt. Ltd. Vs. Commissioner of Gift Tax*, (2001) 249 ITR 337 (SC). He also relied upon Rule 20 of the Third Schedule to the Wealth Tax Act in support of the Revenue's arguments.

6. Learned Senior counsel for the assessee contended that the approach and findings of the ITAT, taking cognizance of the fact that the declaration with respect to the transaction being sham, was logical. It was urged that once the ITAT took note of the fact that the transaction was invalid or a device, the position with respect to how it had to be treated between the two parties was clear. In these circumstances, there was no question of resorting to the assessee under Section 16 of the Act in the present case.

7. This Court has considered the submissions. It is not disputed that in Abhinandan Investments, this Court reversed the ITAT's findings and held that the consideration received and shown by the assessee to be a capital loss in income tax proceedings was a device. At the same time while holding that the characteristic of the sale proceeds as a capital loss, was sham, the Court did not ignore the underlying validity of the share transaction or transfer. It proceeded to bring the amounts into question to tax – either as business receipts or as business losses. Such being the case, this Court is of the opinion that alike treatment had to be given. Furthermore, at the stage, when the ITAT intervened in gift tax proceedings (which are the subject matter in these appeals), it considered only the validity of the proceedings, but, did not consider whether in fact the transaction under Section 4(1)(a) amounted to a deemed gift; no conclusive finding in that regard was rendered; nor any finding could have been rendered or was given.

8. For the above reasons, the impugned orders are hereby set aside. The matters are remitted to the ITAT for fresh consideration in accordance with law.

9. The appeals are allowed in the above terms.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

JANUARY 29, 2018/rc