



T.C.A.Nos.1925 of 2008 & 648 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	28.11.2022
Pronounced On	05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

T.C.A.Nos.1925 of 2008 & 648 of 2009

Commissioner of Income Tax,
Chennai.

... Appellant in
both T.C.As.

Vs.

Dadha Pharma Pvt. Ltd.,
268 Lloyds Road,
Chennai - 14.

... Respondent in
T.C.A.No.1925/2008

S.Mohandchand Dadha (Indl)
268 Lloyds Road,
Chennai - 14.

... Respondent in
T.C.A.No.648/2009

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the orders of the Income Tax Appellate Tribunal, Madras 'A' Bench, both dated 16.11.2007, in IT(SS)A.No.150/Mds/ 2006 and in IT(SS)A.No.180/Mds/2002 respectively.



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For Appellant : Mr.T.Ravikumar
in both T.C.As.

For Respondents : Mr.T.Pramodkumar Chopda
in both T.C.As.

COMMON JUDGMENT

C.SARAVANAN, J.

By this common order, both these Tax Case Appeals are being disposed of.

INTRODUCTION:-

2. Both these Tax Case Appeals have been filed by the revenue viz., the Commissioner of Income Tax against the impugned orders both dated 16.11.2007 passed by the Income Tax Appellate Tribunal [hereinafter referred to as “Tribunal”] in I.T(SS).A.No.150/Mds/2006 and in I.T(SS).A.No.180/Mds/2002 respectively. Details of the respective appeals are as under:-

Table No.1

Sl. No	T.C.A. No.	Date of Impugned Order	Appeal No. before ITAT	Name of the Assessee / Respondent
1	1925/08	16.11.2007	I.T(SS).A.No.150/Mds/2006	M/s.Dadha Pharma Pvt. Ltd. [Dadha Group]



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Sl. No	T.C.A. No.	Date of Impugned Order	Appeal No. before ITAT	Name of the Assessee / Respondent
2	648/09	16.11.2007	I.T(SS).A.No.180/Mds/2002	Shri. S.Mohanchand Dadha (Indl) [SMD]

3. By the impugned orders, the Tribunal has dismissed the respective appeals of the Income Tax Department in I.T(SS).A.No.150/Mds/2006 and in I.T(SS).A.No.180/Mds/2002 filed against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as “*Appellate Commissioner*”] allowing the respective appeals of the respondents in ITA TR No.65/04-05 *vide* order dated 28.03.2006 and in ITA No.CIT(A)(C).VIII/DCCC.32/1.T/100/2001-02 *vide* order dated 05.07.2002 respectively.

4. The dispute in these appeals pertains to the Block Assessment period between 01.04.1988 and 15.12.1998. At the time of admission of these appeals, the following substantial questions of law were framed for being:-

- i. Whether in the facts and circumstances of the case, the Tribunal was right in holding that since the amalgamation is a reality, amounts received by the assessee from the amalgamated company from even



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- before the amalgamation cannot be brought to tax?
- ii. Whether in facts and circumstances of the case, the Tribunal was right in holding that interest on the amounts agreed to be paid by the amalgamated company on outstanding amounts cannot be brought to tax?
 - iii. Whether in the facts and circumstances of the case, the Tribunal was right in permitting the assessee to take up the issue regarding the validity of assessment in the revenue's appeal when the respondent in T.C.A 648/09 had neither filed an appeal nor a cross objection?
 - iv. Whether in the facts and circumstances of the case, the Tribunal was right in invoking Rule 27 of the Income Tax Appellate Tribunal Rules, 1962 when the issue was not at all decided by the Commissioner of Income Tax (A) and did not arise out of his order?

T.C.A.No.648/2009: OPERATIVE PORTION OF THE IMPUGEND ORDER DATED 16.11.2007 in I.T(SS).A.No.180/Mds/2002

5. The operative portion of the impugned order of the Tribunal dated 16.11.2007 in I.T(SS).A.No.180/Mds/2002 reads as under:-

7.We have heard both the parties and perused the records available with us. We are of the considered view that the contention of the Id. Departmental Representative has little merit. Section 158BC of the Act is specific provision for assessment in respect of cases where as a result of search in the premises of an Assessee, valuables, assets, books of account and other documents are found showing his undisclosed



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income. If the said seized material shows undisclosed income. If the said seized material shows undisclosed income of any other Assessee, such income has to be assessed in the hand of the latter under section 158BD read with section 158BC of the Act. Section 158BD has to be invoked where the Assessing Officer is satisfied from the contents of the seized material that any undisclosed income belongs to any person other than the person, search in whose case resulted in seized of such material. In the instant case, the papers, which according to the Assessing Officer showed undisclosed income of the Assessee, were seized from the search in the cases of SPIL and Mahendra Dadha. There is not dispute that search in the case of the Assessee did not result in discovery of any undisclosed income belonging to him. In such a case we find that block assessment under sec.158BC of the Act is not valid in this case, on the anvil of the Hon'ble Jurisdictional High Court decision in the case of CIT v. G.K.Senniappan [2006] 284 ITR 220. The Hon'ble High Court expounded as under:

Section 158BB occurs in Chapter XIV-B, which provides for special procedure for assessment of search cases. The computation of undisclosed income of the block period is contemplated under section 158BB. As per the section, the undisclosed income of the block period should be the aggregate of the total income of the previous year falling within the block period computed in accordance with the provisions of this Act, on the basis of the evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such



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previous years.

A mere reading of the above provision clearly indicates that the sentence “such other materials or information as are available with the Assessing Officer” cannot be bisected or taken in isolation for, the purpose of computation. Such other materials or information as are available with the Assessing Officer, should as per the section relatable to such evidence. The word “such” used as a prefix to the word “evidence” assumes much significance, in this provision, as it indicates only the evidence found, as a result of search or requisition of books of account or other documents, at the time of search. Any other material cannot form basis for computation of undisclosed income of the block period. Hence, we are of the view that the Commissioner as well as the Tribunal have the issue in accordance with the statutory provisions, and requires no interference. The appeal is accordingly dismissed.

Now coming to the present case, we find that the search at the Assessee's premises did not result in unearthing of book of accounts and other documents which lead to the computation of undisclosed income. In this view of the matter, on the basis of exposition of the Hon'ble Jurisdictional High Court in Senniappan's case cited supra, this block assessment cannot be sustained. It was the seized material from other Assessees which was the basis of block assessment. It was incumbent upon the Revenue Authorities to invoke the provisions of sec.158BD of the Act. Now, invoking sec.158BD is not a mere formality. The Hon'ble Apex Court had an occasion to deliberate upon it in the case of the case of Manish Maheshwari v. ACIT & Another [2007] 289 ITR 341 has held that:



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Condition precedent for invoking a block assessment is that a search has been conducted under Section 132, or documents or assets have been requisitioned under Section 132-A. The said provision would apply in the case of any person in respect of whom search has been carried out under Section 132 or documents or assets have been requisitioned under Section 132-A. Section 158-BD, however, provides for taking recourse to a block assessment in terms of Section 158-BC in respect of any other person, the conditions precedents wherefor are: (i) satisfaction must be recorded by the assessing officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (ii) the books of accounts or other documents or assets seized or requisitioned had been handed over to the assessing officer having jurisdiction over such other person; and (iii) the assessing officer has proceeded under Section 158-BC against such other person.

Hence, the plea that essence of this assessment is under sec.158BD of the Act, cannot be sustained as clearly the conditions precedent to initiate sec.158BD as expounded by the Hon'ble Apex Court above, have not been followed. This is therefore a case where section 158BD was required to be invoked. Such requirement cannot be obviated merely because a search was also conducted in the case of the Assessee, admittedly yielding no undisclosed income. Section 158BB(1) only provides for computation of undisclosed income during the block period. It does not override or negate the provisions of section 158BD. Irrespective of whether the assessment is made under section 158BC or under section 158BD



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read with section 158BC, the undisclosed income of the block period has to be computed under section 158BB of the Act. Since in the instant case the undisclosed income of the Assessee was found from the material seized from search of other persons, such income could not be assessed under Chapter XIVB without invoking the provisions of section 158BD. In the prevailing facts and circumstances the block assessment made under section 158BC without invoking the provisions of section 158BD is illegal. This issue is therefore decided in favour of the Assessee and against the Department.

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11. We have carefully considered the submissions of both sides. Identical issue has been considered by us in the case of S.Mohanchand Dadha (HUF) in Appeal No. IT(SS)A No.178/Mds/2005, wherein we elaborately discussed the issue and held that there could not be any capital gains as there is clear evidence that TDPL amalgamated with SPIL. Since there is amalgamation, there should not be sale of shares by Dadhas as contented by the Id. Departmental Representative. Hence, on the same reasoning as given in the case of S.Mohanchand Dadha (HUF) cited supra, we see no reason to interfere with the order of the CIT(A) in this respect. This appeal fails on this issue.

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15. We have considered the rival submissions. Since it has been found that amalgamation of TDPL with SPIL is a fact and therefore TDPL shares could not have been sold to SPIL, the question of receiving any interest by the Assessee on account of the delayed payment of sale consideration does not arise. The order of the CIT(A) deleting the addition of the



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aforesaid amount as interest income of the Assessee is therefore sustained.

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19. We have heard both the sides and perused the records available with us. We have gone through the assessment order as well as the appellate order. We agree with the observation of the C.I.T. (Appeals) that once it is accepted that the Assessee had not purchased shares from the Dadhas and that the amalgamation is a reality, there is no scope for agreeing with the Assessing Officer that all these amounts formed part of income of the Assessee from sale of TDPL shares and interest on delayed payment of sale consideration. It is also observed from the records that no concerned party has during the search or afterwards, admitted of such an amount being paid or received towards interest. Accordingly, we uphold the order of the C.I.T. (Appeals) in deleting the addition of Rs.69,750/-.

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23. We have heard both the sides and perused the records available with us on this issue. Without entering into the debate of whether protective addition is possible in a block assessment, we would like to reiterate that once it is accepted that there has been no sale of TDPL shares to SPIL, there is no scope of making this addition for the reasons for which it was made. The other arguments of the learned Counsel of the Assessee for the deletion of this protective addition also appear to us to be quite convincing. It is observed that Sri Sudhir Valia during the course of recording of the statement under sec.131 of the Act, stated that Rs.1,28,50,000/- was offered for taxation on account of various amounts paid to Dadhas of Chennai and the said



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amount after verification from the records of SPIL increased to Rs.1,33,50,000/- and the same was disclosed in the block return of SPIL. This addition is also not sustainable in view of the Hon'ble Apex Court's decision in the case of CIT v. D.P.Sandhu Bros. Chembur P. Ltd. [2005] 273 ITR 1 wherein it was held that if a particular income falling under a particular head of income cannot be so taxed, the same cannot be taxed in any other head. In the background of the aforesaid discussion and precedent, we are of the view that the C.I.T. (Appeals) was justified in deleting the addition of Rs.1,33,50,000/- made in the hands of the Assessee on protective basis.

In the result, the appeal of the Revenue is dismissed.

T.C.A.No.1925/2008: OPERATIVE PORTION OF THE IMPUGEND ORDER DATED 16.11.2007 IN I.T(SS).A.NO.150/MDS/2006

6. The impugned order dated 16.11.2007 of the Tribunal in I.T(SS).A.No.150/Mds/2006 refers to Paragraph No.7 of the impugned order of the Tribunal dated 16.11.2007 in I.T(SS).A.No.180/Mds/2002 impugned in T.C.A.No.648 of 2009. Relevant portion of the impugned order in I.T(SS).A.No.150/Mds/2006 reads as under:-

11. We have heard both the parties and perused the relevant records available with us. We have considered the submissions of both the parties. Sub



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no reason for the Sun Group to pay money to the Dadha Group after they were allotted shares of M/s.Sun Pharma Industries Limited (SPIL) on amalgamation at the swap ratio of 4:1 determined in the Scheme of Amalgamation sanctioned by the respective High Courts. The Tribunal in the impugned order has further held as under:-

13.We have also found that on facts of these cases, the seized sheets of paper on the basis of which the theory of receipt of sale consideration by the Assessee is sought to be established by the Department are by themselves not adequate to prove that any such amount was received by the Assessee. The facts being identical, in these appeals also there is no reason to differ from the aforesaid findings. In the said case of Shri S.Mohandchand Dadha (HUF) cited supra in para 26, reliance had also been placed upon the Hon'ble Apex Court's decision in K.P.Varghese v. ITO (1981) 131 ITR 597, P.V.Katyanasundaram (294 ITR 49) and CIT v. D.P.Sandu Bros.Chembur P.Ltd.(2005) 273 ITR 1. In the background of the same reasoning and precedent, we decide this issue in favour of the Assessee and reverse the order of the C.I.T.(Appeals) on this issue. Since there is no sale of shares, capital gain did not arise and the C.I.T. (Appeals) was justified in deleting the capital gain in the case of Dadha Pharma P.Ltd. Hence, we allow the appeals of the Assessee on this issue and the appeal of the Revenue on this issue is dismissed.



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8. As far as the supplementary issue relating to the interest on delayed payment of consideration received from M/s.Sun Pharma Industries Limited (SPIL) is concerned, the Tribunal has held that there was no sale of shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) in view of the amalgamation of two companies. Relevant portion of the order reads as under:-

14. This issue is inextricably linked with the earlier issue since, if there was no sale of TDPL shares to SPIL, and actually there had been amalgamation of the two companies, there would be no sale consideration payable by the SPIL and consequently no interest receivable by the assesseees for delayed payment of the same. This matter has been examined by us in the case of S.Mohachand Dadha (HUF) in IT (SS)A No.178/Mds/2005. In the said case, we held that the theory of sale of TDPL shares by the Assessee to SPIL and earning of on money therefrom, as alleged by the CIT (A) has no legs to stand, as there are clear evidences that amalgamation of TDPL with SPIL is a reality. The facts being identical, in these appeals also there is no reason to depart from our earlier finding. The issue is therefore decided in favour of the Assesseees and against the Department. As a result, the order of the CIT (A) in deleting the addition is confirmed in the case of Dadha Pharma Pvt.Ltd and in the other Assesseees, the orders of the CIT(A) are reversed and the additions are deleted. Accordingly, we allow the Assesseees appeals on this issue and dismiss the Revenue's appeal on this issue.



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9. In the light of the above, the Cross Objection No.149/Mds/2006 filed by the assessee namely, the M/s.Dadha Pharma Pvt. Ltd. (the respondent in T.C.A.No.1925 of 2008) was also dismissed with the following observations:-

15. Now coming to the cross objection filed by the Assessee, we are of the view that identical issue has been considered by us in para 7 above and decided this issue in favour of the Revenue. Accordingly, the cross objection filed by the Assessee on jurisdiction is dismissed.

SUBMISSIONS :-

10. The learned Standing Counsel for the appellant Revenue submits that the agreement between the Dadha Group (DG) and the Sun Group for sale of shares shows the total amount payable to each sub group of Dadha depending upon their share holding pattern at Rs.290/- per share, installment scheme for such payment and interest payable calculated on reducing balance method.

11. It is submitted that the funds were transferred by the Sun Group to the Dadha Group by way of interest free loans and advances, deposits



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and trade advances and that if the scheme of amalgamation is to be followed, then there was no need for Sun Group to advance loan to Dadha Group to acquire shares from the M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO). It is submitted that the transfer of huge amounts from Sun Group to Dadha Group for this purpose is also accepted by the respondent.

12. It is submitted that though the Scheme of Amalgamation was approved by the Gujarat High Court and this Court in November, 1997, payments have been made continuously by the Sun Group to Dadha Group till the date of search in December 1998 and interest were charged on the defaulted installments.

13. It is submitted that there was absolutely no need of any payment as per the Amalgamation Scheme. Many of the correspondence between the Dadha Group and Sun Group were subsequent to the High Courts' order indicates that over and above the Scheme of Amalgamation was approved by the High Courts, the cash payments as mentioned in the agreements were made for the share transfer.



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14. It is submitted that the Tribunal erred in holding that the amounts cannot be taxed as there was no sale of transfers and the Appellate Commissioner has treated the receipt of moneys only as income from other sources and not capital gains. Therefore, the learned Standing Counsel for the appellant Revenue prays for setting the aside the impugned order and allowing these appeals.

15. The learned Standing Counsel for the appellant Revenue relied on the following decisions:-

- i. **Commissioner of Income Tax Vs. Estate of Late Balu Bai Dadha**, dated 08.01.2020 passed by this Court in T.C.Nos.1482 to 1487 and 937 of 2008.
- ii. **Ramanlal Kamdar Vs. Commissioner of Income Tax**, (1977) 108 ITR 0073.
- iii. **P.R.Narahari Rao Vs. Commissioner of Income Tax**, (2008) 299 ITR 0400.
- iv. **B.Jayalakshmi Vs. Assistant Commissioner of Income Tax**, (2018) 407 ITR 0212 (Mad).
- v. **Smt.Jaswinder Kaur Kooner Vs. Commissioner of Income Tax**, (2007) 291 ITR 0080.
- vi. **Commissioner of Income Tax Vs. Jamnadas Virji Shares and Stock Brokers Pvt. Ltd.**, (2013) 258 CTR 0458.
- vii. **Surjeet Singh Chhabra Vs. Union of India and others**, (1997) 1 SCC 508.
- viii. **Commissioner of Income Tax Vs. Durga Prasad**



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- More, (1971) 82 ITR 0540.**
- ix. **Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and another, (1973) 91 ITR 0018.**
 - x. **Anjuga Chit Fund (P) Ltd. Vs. Deputy Commissioner of Income Tax, (2009) 318 ITR 0121.**
 - xi. **K.Ramasamy Vs. Commissioner of Income Tax, (2003) 261 ITR 0358.**
 - xii. **C.K.Gangadharan and Another Vs. Commissioner of Income Tax, (2008) 304 ITR 0061.**
 - xiii. **Commissioner of Income Tax Vs. Oswal Agro Mills Ltd., (2009) 313 ITR 0024.**
 - xiv. **Mangalore Ganesh Beedi Works Vs. Commissioner of Income Tax, (2015) 378 ITR 0640 (SC).**
 - xv. **Sumati Dayal Vs. Commissioner of Income Tax, (1995) 214 ITR 0801.**
 - xvi. **Commissioner of Income Tax Vs. P.Mohanakala and others, (2007) 291 ITR 0278.**
 - xvii. **Tapan Kumar Dutta Vs. Commissioner of Income Tax, (2018) 404 ITR 0028.**
 - xviii. **Commissioner of Income Tax Vs. Jamnadas Virji Shares and Stock Brokers Pvt. Ltd., (2013) 258 CTR 0458.**
 - xix. **Commissioner of Income Tax Vs. Durga Prasad More, (1971) 82 ITR 0540.**
 - xx. **Surjeet Singh Chhabra Vs. Union of India and others, (1997) 1 SCC 508.**
 - xxi. **Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and another, (1973) 91 ITR 0018.**
 - xxii. **Commissioner of Income Tax-II, Ahmedabad Vs. Mastek Ltd., [2013] 358 ITR 252 (SC).**

16. Per contra, in so far as T.C.A.No.648 of 2009, the learned counsel for the respondent [S.Mohanchand Dadha (Indl)] submits that the



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Assessment Order dated 19.06.2001 was passed for the block period 01.04.1988 to 15.12.1998. It is submitted that in the Assessment Order dated 19.06.2001, the following additions were made:-

Undisclosed income for the block period	Rs. 47,56,638/-
Addition made by way of protective assessment	Rs.1,33,50,000/-

	Rs.1,81,06,638/-

17. It is submitted that the respondent had filed an appeal before the Appellate Commissioner in Appeal No.CIT(A)C.VIII/DCCC.32/I.T.100/2001-02 against the above addition. The said appeal was partly allowed by deleting the both undisclosed income and protective assessment. The protective assessment was deleted on the ground that same was disclosed in the block Rate of Interest filed by the Sun Pharma India Ltd. (SPIL) as undisclosed income.

18. It is submitted that against the said order of the Appellate Commissioner, the appellant Revenue has filed an appeal before the Tribunal in I.T.(SS) A.No.180/Mds/2002 which was dismissed *vide*



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impugned order dated 16.11.2007, against which, the present T.C.A.No.648 of 2009 has been filed.

19. It is submitted that in the present appeal, the appellant revenue had not disputed the deletion of the addition of Rs.1,33,50,000/- made by way of protective assessment as evident from the statement of facts, grounds of appeal and question of law raised in the present appeal. The dispute in the present T.C.A.No.648 of 2009 only relates to the deletion of undisclosed income of Rs.47,56,638/- and therefore, the tax due on such disputed income is much below Rs.1,00,00,000/-.

20. It is submitted that T.C.A.No.648 of 2009 is liable to be dismissed as withdrawn in view of monetary limit for filing of appeal by the Department as per the Circular/Instruction of the CBDT *vide* Circular No.17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ(Pt.).

21. In so far as T.C.A.No.1925 of 2008, the learned counsel for the respondent/assessee submits that there was an amalgamation of M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) with M/s.Sun Pharma



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Industries Limited (SPIL) Group and there was no sale of shares. It is submitted that initially, there was a discussion about the sale of shares held by Dadha Group in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) to the M/s.Sun Pharma Industries Limited (SPIL). However, M/s.Sun Pharma Group was interested in getting merged M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) with M/s.Sun Pharma Industries Limited (SPIL). Therefore, the discussion remained only as a discussion and was not acted upon.

22. It is submitted that before Schemes of Amalgamation were sanctioned by both the High Courts, the publicity was made in respect of amalgamation in the following newspapers on 15.05.1997:-

- i. Business Standard, Calcutta.
- ii. Business Line, Chennai.
- iii. Business Express, Chennai.
- iv. The Economic Times, Chennai.
- v. The Hindu, Chennai.
- vi. The Economic Times, Chennai.

23. It is submitted that no shareholder raised any objections to the proposed amalgamation. It is submitted that for computing capital gain, the necessary condition is that there should be transfer of an asset. There



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are no records to substantiate that there was a transfer. It is submitted that as per Section 108 of the Companies Act, 1956, there is a proper procedure laid down for registration of transfer of shares.

24. The share certificates along with their distinctive numbers should be surrendered to the company along with the transfer forms duly executed by the transferor and the transferee in the office of the company. It is submitted that there were no such transfer forms duly executed by purchaser and seller were submitted to M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL).

25. It is submitted that the Assessing Officer concluded that the funds were received by the Dadha Group from Sun Pharma Group through its various companies for sale of shares or the interest on delayed payments, but, only the amount of Rs.3 Crores was received from Aditya Medi Sales Ltd. (AML) which is one of the companies of the Sun Pharma Group for construction of godown which was later refunded to the Aditya Medi Sales Ltd. (AML) as the construction of godown could not be feasible owing to the new guidelines issued by the Chennai Metropolitan



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Development Authority (CMDA).

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26. It is submitted that any interested party or any shareholder whose rights would have been affected by such take over did not lodge any complaint before the SEBI. SEBI has also not taken any action *suo moto*.

27. The learned counsel for the respective respondents relied on the following decisions:-

- i. **Sree Meenakshi Mills Ltd. Vs. Commissioner of Income Tax**, [1957] 31 ITR 28 (SC)
- ii. **K.P.Varghese Vs. Income Tax Officer**, [1981] 7 Taxman 13 (SC)
- iii. **Union of India Vs. Kaumudini Narayan Dalal**, [2001] 249 ITR 219 (SC)
- iv. **Commissioner of Income Tax Vs. Narendra Doshi**, [2002] 254 ITR 606 (SC)
- v. **Commissioner of Income Tax Vs. Shivsagar Estate**, [2002] 257 ITR 59 (SC)
- vi. **Commissioner of Income Tax Vs. P.V.Kalyanasundaram**, [2006] 155 Taxman 454 (MAD.)
- vii. **Commissioner of Income Tax, Salem Vs. P.V.Kalyanasundaram**, [2007] 164 Taxman 78 (SC)
- viii. **Commissioner of Income-tax, Coimbatore Vs. G.K.Senniappan**, [2006] 155 Taxman 118 (Mad.)



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- ix. **Manish Maheshwari Vs. Assistant Commissioner of Income Tax**, [2007] 159 Taxman 258 (SC)
- x. **The State of Tamil Nadu, rep. by the Joint Commissioner (CT) Vs. Tvl.Union Surgicals**, dated 14.03.2018 in T.C.(Rev.) No.27 of 2018.
- xi. **Principal Commissioner of Income Tax Vs. M/s.Ojasvi Motor Finance Pvt. Ltd.**, dated 05.09.2022 in T.C.A.No.231 of 2022.

28. The learned counsel for the respective respondents therefore prays for dismissal of both the appeals.

CONSIDERATION :-

29. We have considered the arguments advanced by the learned Standing Counsel for the appellant and the learned counsel for the respondent in the respective appeals.

T.C.A.No.648 of 2009

30. An Assessment Order dated 19.06.2001 was passed by the Assessing Officer against S.Mohanchand Dadha (Ind.) the respondent in T.C.A.No.648 of 2009 for the block period.

31. Against the Assessment Order dated 19.06.2001,



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Mr.S.Mohanchand Dadha (Ind.), the respondent herein filed an appeal before the Appellate Commissioner in I.T.A.No.CIT(A)C.VIII/DCCC.32/I.T/ 100/2001-02. The Appellate Commissioner *vide* order dated 05.07.2002 partly allowed the appeal of the Mr.S.Mohanchand Dadha (Ind.), the respondent herein in T.C.A.No.648 of 2009.

32. Against the said order dated 05.07.2002 in I.T.A.No.CIT(A) C. VIII/DCCC.32/I.T/100/2001-02, the appellant has filed I.T. (S.S.) No.180/Mds/2002 before the Tribunal. The above appeal was dismissed *vide* impugned order dated 16.11.2007 by the Tribunal by upholding the decision of the Appellate Commissioner.

T.C.A.No.1925 of 2008

33. Similarly, an Assessment Order dated 30.07.2003 was passed by the Assessing Officer against M/s.Dadha Pharma Pvt. Ltd., the respondent herein.

34. Against the said order dated 30.07.2003, M/s.Dadha Pharma



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Pvt. Ltd., the respondent herein filed an appeal before the Appellate Commissioner in ITA No.65/04-05. The said appeal was partly allowed by the Appellate Commissioner *vide* order dated 28.03.2006.

35. Challenging the same, the Assistant Commissioner of Income Tax filed I.T.(SS) A.No.150/Mds/2006 before the Tribunal. The said appeal was dismissed by the Tribunal *vide* impugned order dated 16.11.2007.

36. In fact, all the members of the Dadha Group had filed similar appeals and the issue came for consideration before the Tribunal. Details of the appeals filed before Tribunal are as under:-

Sl. No	Appeal No. / Cross Obj.No.	Name of the appellant	Name of the respondent	Nature of Disposal
1	I.T(SS).A.No.172/Mds/2005	Estate of late Balu Bai Dadha, by executor S.Mohanchand Dadha	Deputy Commissioner of Income Tax	Partly Allowed
2	I.T(SS).A.No.173/Mds/2005	Pradeep Dadha		Partly Allowed
3	I.T(SS).A.No.174/Mds/2005	Kanta Kavar		Partly Allowed
4	I.T(SS).A.No.177/Mds/2005	Subhagmal Mohanchand Dadha (HUF)		Partly Allowed
5	I.T. (SS).A.No.178/Mds/2005	S.Mohanchand	Deputy	Partly



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Sl. No	Appeal No. / Cross Obj.No.	Name of the appellant	Name of the respondent	Nature of Disposal
		Dadha (HUF)	Commissioner of Income Tax	Allowed
6	I.T(SS).A.No.150/Mds/2006	Assistant Commissioner of Income Tax	Dadha Pharma P. Ltd.	Dismissed
7	Cross Obj.No.149/Mds/2006	Dadha Pharma P. Ltd.	Assistant Commissioner of Income Tax	Dismissed
8	I.T(SS).A.No.176/Mds/2005	M.Meherchand Dadha	Deputy Commissioner of Income Tax	Allowed
9	I.T(SS).A.No.180/Mds/2005	Deputy Commissioner of Income Tax	M.Meherchand Dadha	Partly Allowed
10	I.T(SS).A.No.180/Mds/2002	Deputy Commissioner of Income Tax	S.Mohanchand Dadha (Indl.)	Dismissed

Sl.No.6. is the subject matter of T.C.A.No.1925 of 2008.

Sl.No.10 is the subject matter of T.C.A.No.648 of 2009.

37. Aggrieved by the above decisions in appeals at Sl.Nos.1, 2, 3, 4, 5, 7 & 9, the Commissioner of Income Tax had filed appeals before this Court in Tax Case Nos.1482 to 1487 and 937 of 2008. These appeals were however dismissed as withdrawn *vide* Judgment dated 08.01.2020 on account of the litigation policy of the Income Tax Department.

38. As far as the present appeals are concerned, we are concerned



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with the impugned orders passed by the Tribunal in the I.T. (SS) As. at
Sl.Nos.6 & 10.

39. The dispute in these two T.C.As. arises out of acquisition of 26% shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) by Dadha Group(DG) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) which was later merged with M/s.Sun Pharma Industries Limited (SPIL).

40. Dadha Group consisted of the following persons/entities:-

- i. S.Mohanchand Dadha (SMD)
- ii. M.Mohanchand Dadha (MCD)
- iii. M.Mahendra Dadha (MMD)
- iv. M/s.Phalodi Investment Pvt. Ltd.
- v. M/s.Antriksh Pharma
- vi. M/s.Dukan

41. In these appeals, we are concerned with two of the persons/entities of S.Mohanchand Dadha Group (SMD Group). Mohanchand Dadha Group (SMD Group) consisted of the following persons/entities who/which held about 2,06,820 shares in M/s.Tamil Nadu



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Dadha Pharmaceuticals Ltd. (TNDPL) before the acquisition of shares from M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) as detailed below:-

Table No.2

Name of the members / concerns of SMD Group	Shares held in TNDPL
Dadha Pharma Pvt. Ltd. *	127,500
Balu Bai	14,790
Kanta Kavar Dadha	3,750
Pradeep Dadha	18,750
S.Mohanchand Dadha (HUF)	12,030
Subhagmal Mohanchand	15,000
S.Mohanchand Dadha (IND) #	15,000
Total	2,06,820

* The respondent in T.C.A.No.1925 of 2008

The respondent in T.C.A.No.648 of 2009

42. It emerges that M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) was incorporated as a Joint Venture between the said Dadha Group (DG) at Chennai and M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO).

43. About 25 % of the shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) were held by Dhadha Group (DG). 26% of



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the shares numbering 4,29,178 were held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL).

44. M/s.Sun Pharma Industries Limited (SPIL) was apparently interested in acquiring the shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL). It appears that as per Memorandum of Understanding (MOU) between the co-promoters viz., Dadha Group, Chennai and M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO), the Dadha Group, Chennai had a peremptory right to purchase the shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL), if M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) wanted to disinvest its holdings in the latter.

45. M/s.Sun Pharma Industries Limited (SPIL) however could not directly acquire the aforesaid 26% of the shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO).

46. Therefore, M/s.Sun Pharma Industries Limited (SPIL) funded



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the Dadha Group, Chennai to acquire 26% of shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL).

47. It is not clearly stated as to the total number of shares of M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL). Total number of shares of M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) would have been 16,52,568 based on reverse calculation on the percentage of shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) as follows:-

Sl. No.	Name of the Group / Entity	Number of Shares	Percentage
1	Dadha Group	4,13,632	25 %
2	TIDCO	4,29,178	26 %
3	Public	8,09,758	49 %
Total		16,52,568	100 %

48. **26%** of the shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL), i.e. **4,29,178** shares were purchased by Dadha Group, Chennai, on 13.05.1997 at the rate of Rs.87.41 per share



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out of the funds provided by M/s.Sun Pharma Industries Limited (SPIL) and its group of companies (Sun Group), though Dadha Group were paid **Rs.290/-** per share by M/s.Sun Pharma Industries Limited (SPIL) for the consolidated shares held by the Dadha Group after acquisition.

49. After acquiring **26%** of the shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL), the composition of the shareholding pattern in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) was altered.

50. S.Mohanchand Dadha (SMD) Group came to hold **4,21,413** shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) as detailed below:-

Table No.3



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Name of the members / concerns of SMD Group	Shares already held in TNDPL	Shares purchased from TIDCO	Total shares held in TNDPL
Dadha Pharma Pvt. Ltd. *	127,500	143,393	270,893
Balu Bai	14,790	13,300	28,090
Kanta Kavar Dadha	3,750	3,400	7,150
Pradeep Dadha	18,750	16,800	35,550
S.Mohanchand Dadha (HUF)	12,030	37,700	49,730
Subhagmal Mohanchand	15,000	NIL	15,000
S.Mohanchand Dadha (IND) #	15,000	NIL	15,000
Total	2,06,820	2,14,593	4,21,413

* The respondent in T.C.A.No.1925 of 2008

The respondent in T.C.A.No.648 of 2009

51. S.Mohandchand Dadha Group (SMD Group), to which the respective respondents belong, held about **2,06,820** shares before the acquisition of shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO). 26% of the shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) was about **4,29,178** shares as per the assessment order.

52. Mohandchand Dadha Group (SMD Group), to which the respective respondents belong, held about **2,06,820** shares before the



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acquisition of shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO). 26% of the shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) was about **4,29,178** shares as per the assessment order.

53. Acquisition of shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) was funded by M/s.Sun Pharma Industries Limited (SPIL) Group. After acquisition of shares, the members of Dadha Group viz., S.Mohandchand Dadha Group (SMD Group), to which the respective respondents/assesseees belong, M.Meherchand Dadha Group (MCD Group) Group and M.Mahendra Dadha Group (MMD Group) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) held the following shares:-

Sl. No.	Name of the Group	Before Acquisition	Acquired from TIDCO	Total No. of shares
1	S.Mohandchand Dadha Group (SMD Group)	2,06,820	2,14,593	4,21,413
2	M.Meherchand Dadha Group (MCD Group)	1,03,332	1,07,365	2,10,697
3	M.Mahendra Dadha Group (MMD Group)	1,03,480	1,07,220	2,10,700



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Total	4,13,632	4,29,178	8,42,810
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54. M/s.Sun Pharma Industries Limited (SPIL) and its Group of company paid a sum of **Rs.16,85,62,000/-** to the members of Dadha Group (DG) viz., S.Mohandchand Dadha Group (SMD Group) [to which Group the respective respondents belong], to M.Meherchand Dadha Group (MCD Group) and to M.Mahendra Dadha Group (MMD Group) between 01.07.1997 and 01.01.1999 at the rate of Rs.290/- per share as detailed below:-

Sl. No.	Date	SMD	MMD	MCD	Total
1	01.07.1997	1,20,00,000	60,00,000	60,00,000	2,40,00,000
2	01.10.1997	1,27,50,000	63,75,000	63,75,000	2,55,00,000
3	01.01.1998	1,20,00,000	60,00,000	60,00,000	2,40,00,000
4	01.04.1998	1,27,50,000	63,75,000	63,75,000	2,55,00,000
5	01.07.1998	1,20,00,000	60,00,000	60,00,000	2,40,00,000
6	01.10.1998	1,27,82,600	63,90,000	63,89,400	2,55,62,000
7	01.01.1999	1,00,00,000	50,00,000	50,00,000	2,00,00,000
Total		8,42,82,600	4,21,40,000	4,21,39,400	16,85,62,000

55. The break up for the aforesaid amounts is as under:-

	SMD	MMD	MCD	Total
No. of shares	421413	210700	210697	842810



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Cheque @ 90	37927170	19863000	19862730	75852900
CA @ 200	84282600	42140000	42139400	168562000

56. Apart from the above payments of **Rs.16,85,62,000**, for delayed payments, Dadha Group (DG) were also paid interest by M/s.Sun Pharma Industries Limited (SPIL) and group of companies. SMD Group received a sum of Rs.94,64,606/- towards interest for the delayed payments. Out of the above, Rs.3,36,888/- was notionally apportioned to the respondent in T.C.A.No.648 of 2009. Relevant portion of the Assessment Order dated 19.06.2001 reads as under:-

Interest: As regards **the interest on installments due to the assessee**, the details are as per page 174 & 175 of annexure A6 of panchanama dated 7.12.1998 as per which the interest upto 01.10.1998 works out to **Rs.88,38,815/-**. The corresponding interest for the period 01.10.1998 to 15.12.1998 @ 13.5 on the amount outstanding of Rs.3,67,81,600/- is **Rs.6,25,791/-**. Hence, the total interest due to the MMD* group in the block period works out to **Rs.94,64,606/-**. SMD (Ind.) holds 15,000 out of total shares held by the group of 4,21,413 i.e., 3.56% of the group holding. Hence, the interest attributable to SMD (Ind.) on prorata basis works out to Rs.3,36,888/-. This amount is taxed as undisclosed income for A.Y. 1998-99 & 99-00 on account of interest not shown in the return of income.



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* SMD

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57. While the above amounts of **Rs.16,85,62,000/-** and interest were being paid by the M/s.Sun Pharma Industries Limited (SPIL) and its Group of companies to the above mentioned members of Dadha Group for acquisition of shares by them in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO), a mirage of amalgamation between the M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) and M/s.Sun Pharma Industries Limited (SPIL) was orchestrated before the Gujarat High Court in C.P.No.298 of 1997 and before this Court in and C.P.No.241 of 1997.

58. Schemes of Amalgamation were also sanctioned by the Gujarat High Court in C.P.No.298 of 1997 *vide* order dated 19.11.1997 and by this Court in C.P.No.241 of 1997 *vide* order dated 04.11.1997.

59. On account of Schemes of Amalgamation being sanctioned by these two Courts, M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) stood merged with M/s.Sun Pharma Industries Limited (SPIL) and



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M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) ceased to exist.

The High Courts were not made aware of these underlying transactions prior to the petitions filed by these two companies.

60. Out of **4,29,178** shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL), about 50% of shares equivalent to **2,14,593** shares were internally allotted to S.Mohanchand Dadha (SMD) Group over and above **2,06,820** shares already held by them prior to the acquisition in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL).

61. S.Mohanchand Dadha (SMD) Group had consolidated a total of **4,21,413** shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) by acquiring the shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) held in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) @ the rate of Rs.87.41/- per share. However, huge amounts were transferred in cash by M/s.Sun Pharma Industries Limited (SPIL) to Dadha Group (DG) to acquire the shares at the rate of Rs.290/- per share.



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62. As mentioned above, simultaneously, vehicle of amalgamation between M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) and M/s.Sun Pharma Industries Limited (SPIL) was used as a smoke screen to evade income tax as transfer of shares arising out of amalgamation are not liable to tax under Section 47(vi) of the Income Tax Act, 1961. Relevant portion of Section 47(vi) of the Income Tax Act, 1961 reads as under:-

Transactions not regarded as transfer.

47. Nothing contained in section 45 shall apply to the following transfers :—

(i).....

.....
(vi) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;

63. As per the sanctioned Scheme of Amalgamation, for every 4 shares held by shareholders in Transferor Company, viz. M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL), the shareholders were entitled to one share in the Transferee Company, viz. M/s.Sun Pharma Industries Limited (SPIL).



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64. Thus, members and entities under of SMD Group of Dadha Group (DG) who held shares in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) came to hold a consolidated 1,05,353 numbers of shares in the Transferee Company, viz. M/s.Sun Pharma Industries Limited (SPIL) as detailed below:-

Table No.4

Name of the Members and Concerns of SMD Group	Shares held in TNDPL after purchasing shares from TIDCO	Shares entitled in SPIL after amalgamation
Dadha Pharma Pvt. Ltd.*	2,70,893	67,723
Balu Bai	28,090	7,022
Kanta Kavar Dadha	7,150	1,788
Pradeep Dadha	35,550	8,888
S.Mohanchand Dadha (HUF)	49,730	12,432
Subhagmal Mohanchand	15,000	3,750
S.Mohanchand Dadha (IND)#	15,000	3,750
Total	4,21,413	1,05,353

* The respondent in T.C.A.No.1925 of 2008

The respondent in T.C.A.No.648 of 2009

65. It is the case of the Income Tax Department that there was a capital gain arising out of transfer of shares held by the respective respondents in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL).



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On account of amalgamation of M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) with M/s.Sun Pharma Industries Limited (SPIL), the above capital gain was not offered to tax.

66. This transfer arising out of amalgamation was treated as “capital gains” in the hands of the shareholders (the respondents herein) and other members of the Dadha Group (DG) and therefore, proceedings came to be initiated under Section 158BC of the Income Tax Act, 1961 by issuing notice to both the members of the Dadha Group and M/s.Sun Pharma Industries Limited (SPIL) for the block period between 01.04.1988 and 15.12.1998.

67. Income had escaped assessment from the hands of Dadha Group as undisclosed income in the respective returns filed by them. M/s.Sun Pharma Industries Limited (SPIL) and its group companies had given a huge amount in cash and cheques to the Dadha Group ie. to S.Mohandchand Dadha (SMD) Group, M.Meherchand Dadha (MMD) Group and M.Mahendra Dadha (MCD) Group to acquire shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in



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M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) @ the rate of Rs.290/- per share. For delayed payments by M/s.Sun Pharma Industries Limited (SPIL) and its group companies to Dadha Group (DG), M/s.Sun Pharma Industries Limited (SPIL) has also paid interest to Dadha Group (DG).

68. The shares held by the Dadha Group before acquisition of shares from M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) was 4,13,632.

69. S.Mohandchand Dadha Group (SMD Group) held 2,06,820 shares before the acquisition of shares of M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO) in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL). The other persons/entities of the Dadha Group would have held about 2,06,812 [4,13,632 – 2,06,820] before acquisition. In other words, S.Mohandchand Dadha Group (SMD Group), to which the respective respondents belong, would have held about 12.51% of the shares and others in Dadha Group would have held about 12.49% in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL).

70. It is evident that M/s.Sun Pharma Industries Limited (SPIL) has



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paid amounts only to the Dadha Group for the shares held by them in M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) and not to other shareholders.

71. Though the Amalgamation of M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) with M/s.Sun Pharma Industries Limited (SPIL), pursuant to the sanctioning of the Schemes by Gujarat High Court on 19.11.1997 in C.P.No.298 of 1997 and by this Court on 04.11.1997 in C.P.No.241 of 1997 is a reality, and was outside the purview of capital gain, the fact remains that amounts were paid for acquiring 26% of shares in the transferor Company namely, M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) by M/s.Sun Pharma Industries Limited (SPIL) and its Group of the shares held by M/s.Tamil Nadu Industrial Development Corporation Ltd. (TIDCO). The amount paid to the Dadha Group by M/s.Sun Pharma Industries Limited (SPIL) and its Group Company are undisclosed income, which is liable to be taxed. Therefore, subsequent Amalgamation is irrelevant.

72. Further merger/amalgamation can result only in the shares being allotted in the transferee Company namely, M/s.Sun Pharma Industries Limited (SPIL) Group for the shares held in M/s.Tamil Nadu Dadha



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Pharmaceuticals Ltd. (TNDPL), as per the share exchange ratio in the

Schemes of Amalgamation sanctioned by the respective High Courts.

Unless the Scheme of Amalgamation itself contemplated a cash component, there would be no question of such amounts. In this case, payment of cash was independent of the amalgamation and prior to the amalgamation though amalgamation has been used as a device to put a smoke screen to avail the benefit of Section 47 of the Income Tax Act, 1961.

73. Ordinarily, in an amalgamation, there is no question of amounts being paid when there is an amalgamation *simplicitor*. Though amalgamation is a reality, the fact remains that the amounts have been received by the Dadha Group between 01.07.1997 and 01.01.1999 as detailed above. These amounts are nothing but undisclosed income within the meaning of Section 158B(b) of the Income Tax Act, 1961 in the hands of members of Dadha Group which includes the respective respondents herein and therefore liable to assessment under Section 158BA of the Income Tax Act, 1961.

74. The amounts received by the respective respondents/assesseees



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are therefore liable to income tax as they had escaped tax. The amounts paid by the M/s.Sun Pharma Industries Limited (SPIL) Group to the respective respondents are liable to tax.

75. The amounts which were generated in cash for being paid to the Dadha Group also would have been undisclosed income in the hands of M/s.Sun Pharma Industries Limited (SPIL). However, we are not concerned with the undisclosed income in the hands of M/s.Sun Pharma Industries Limited (SPIL) in these T.C.As.

76. Merely because some of the cases filed by the Income Tax Department were disposed in the light of the Litigation Policy of the Income Tax Department will not impel to dismiss these T.C.As. as admittedly the amalgamation though reality was devised to create a smoke screen in the eyes of the Income Tax Department to evade tax on the amounts transferred in cash without proper accounting. But, for the search conducted under Section 132 of the Income Tax Act, 1961 at the premises of the respective respondents and their Groups namely, Dadha Group and at the premises of M/s.Sun Pharma Industries Limited (SPIL) Group, the



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truth would have not came to the light.

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77. The submission of the respondent in T.C.A.No.648 of 2009 that the amount involved is below the monetary policy cannot be accepted as admittedly the amount of Rs.8,42,82,600/- alone was received by the Mr.S.Mohandchand Dadha for SMD Group from the M/s.Sun Pharma Industries Limited (SPIL) and its Group of companies. There are only notional allocations based on the number of shares before and after acquisition that were held and allegedly transferred prior to the amalgamation. None of the documents relating to the allocation of shares prior to the amalgamation has been filed. Share Registers of M/s.Tamil Nadu Dadha Pharmaceuticals Ltd. (TNDPL) were also not produced before Assessing Officer.

78. Whether the amounts were individually received by the respondent in T.C.A.No.648 of 2009 or consolidated amounts were received by the members of the SMD Group out of Rs.16,85,62,000/- is also not available. Therefore, the arguments that the undisclosed income for the block period 01.04.1998 to 15.12.1998 is below the litigation policy cannot be accepted.



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79. We are of the view, to meet the end of justice, that a fresh assessment is required to be made by the assessing officer based on the records instead of notinal allocation of amounts received by the S.Mohandchand Dadha Group (SMD Group) without any proof of direct transfer of the amounts to the individual members of the S.Mohandchand Dadha Group (SMD Group).

80. Therefore, while answering the substantial questions of law in favour of the appellant revenue and against the respective respondents assesseees, the impugned orders are set aside and cases are remitted back to the Assessing Officer to pass a fresh order on merits and in accordance with law after giving opportunity to the respective respondents to make their submissions in the *denova* proceedings. It is made clear that since the dispute pertains to Block Assessment Years 1988 to 1998, the assessing officer shall pass a fresh order on merits and in accordance with law as expeditiously as possible, preferably, within a period of 90 days from the date of receipt of a copy of this order after following principle of natural justice.

81. In the result,



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T.C.A.Nos.1925 of 2008 & 648 of 2009

- i. Impugned orders of the Tribunal confirming the orders of the Appellate Commissioner are set aside.
- ii. Substantial questions of law are answered in favour of the appellant and against the respective respondents.
- iii. Respective cases are remitted back to the assessing officer to pass a fresh order after hearing the respective respondents in the light of the observations contained herein.
- iv. These Tax Case Appeals are allowed by way of remand. No cost.

S.V.N., J. C.S.N., J.
05.04.2023

Internet : Yes / No

Index: Yes/ No

jen

To

1.Income Tax Appellate Tribunal,
Chennai 'A' Bench.

2.Deputy Commissioner of Income Tax,
Central Circle 32, Mumbai.

3.The Assistant Commissioner of Income Tax,
Company Range I-(4), Chennai.

S.VAIDYANATHAN, J.



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T.C.A.Nos.1925 of 2008 & 648 of 2009

AND
C.SARAVANAN, J.

jen/smn2

Pre-Delivery Common Judgment
made in
T.C.A.Nos.1925 of 2008 & 648 of 2009

05.04.2023