127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:092543-DB

ITA-81-2024 (O&M)
Date of Decision: 23.07.2024

Pr. Commissioner of Income Tax-1 Ludhiana …Appellant

Vs.

M/s Adinath Investment & Training Co. (Now known as Adishwar Enterprises LLP), Ludhiana
…Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Ranvijay Singh, Sr. Standing Counsel for the appellant.
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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The revenue challenges order dated 12.10.2023, passed by the ITAT for the assessment year 1993-1994, allowing the appeal filed by the assessee.

2. Learned counsel submits that there was no actual loss on account of reduction of the share price and the Tribunal has erred in considering the notional net business loss.

3. Briefly the facts of the case are that the assessee-company filed its return of income in the status of Investment Company. It has claimed capital loss due to fall in value of equity shares of M/s Vardhman Spinning and General Mills Limited, amounting to Rs.1,94,54,400/-. It is also claimed that capital loss on account of sale of non-convertible portion of debentures of M/s Vardhman Spinning and General Mills Ltd. amounting to Rs.9,87,485/- and also claimed exemption under Section 10 (2A) of the Act, 1961 (for short 'the Act, 1961') of an amount of Rs.75,936/- from share of

income from M/s Adinath Syndicate. Thus, total loss amounting to Rs.2,04,41,885/- was claimed to be carried forward to the next year under the head 'capital gain'.

4. The Assessing Officer during re-assessment proceedings referred to the assessment order of 1995-1996, wherein it was held to be only a notional loss and disallowed the claim of the assessee for carry forward of capital loss of Rs.2,04,41,885/-. The CIT (Appeals), ultimately allowed the short term capital loss of Rs.9,87,485/- and also the claim of the loss relating to the fall of value in the shares and thus vide its order dated 03.03.2003 set aside the order of the AO.

5. The order of CIT (Appeals) was taken before the Tribunal who vide its order dated 15.05.2006, set aside the order of CIT (Appeals) and held that the income set off derived by the assessee under the head "capital gain' was accessible as income under the head 'income from business or profession'. The assessee was held to be a dealer in share and the matter was, therefore, remanded back to the AO.

6. The AO held that the gain or loss that will arise under the head 'income from business or profession' will arise only where there has been an actual transfer of shares and since there has not been any transfer, just a notional loss due to fall in value of the equity shares, the same cannot be allowed to be carried forward.

7. The appeal was again preferred to CIT (A) who vide its order dated 19.02.2016, dismissed the appeal of the assessee, whereafter, the case was taken up before the ITAT.

8. The ITAT examined the matter in the light of judgment passed by the Hon'ble Supreme Court in the case of Miss Dhun Dadabhoi Kapadia vs. CIT 1967 (63) ITR 651 (SC), wherein, it was held as under:-

> “"A concomitant of the acquisition of the new right was the depreciation in the 'value of the old shares, and the depreciation may, in a commercial sense, be deemed to be the value of the right which she subsequently transferred. The capital gain made by her would, therefore, be represented only by the difference between the money realised on transfer of the right, and the amount which she lost in the form of depreciation of her original shares in order to acquire that right. Looked at in this manner also, it is clear that the net capital gain by her would be represented by the amount realised by her on transferring the right to receive new shares, after deducting therefrom the amount of depreciation in the value of her original shares"

9. It also relied on the case of CIT vs. K.A. Patch (1971) 81 ITR 413 (Bombay), wherein, it was held as under:-

> "We had pointed out to Mr. Joshi that the facts of our case were not only similar, but identical, to those before the Supreme Court in Dhun Kapadia's case. Mr. Joshi made various attempts to distinguish our case from the case of Dhun Kapadia; but, in our opinion, he could not point out any effective distinction: One of the distinctions he sought to make was that Dhun Kapadia's case was a case of capital gains whereas the case before us is of

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business profits. Now, in our opinion, it is a distinction which does exist, but it makes no difference, because in the case of both capital gins and revenue profit the amount is ascertained by deducting the cost price form the sale proceeds. In the case of capital gains the excess is a gain in the capital, whereas in the case of business profits, the excess is a revenue profit, but none the less, basically, both are profits. Of course, the fact whether it is capital gain or business profit merely affects the incidence and the rate of tax and the actual amount of tax may vary because of that reason, but the method of calculating the actual amount does not very and is the same.

We do not see any distinction which makes a difference between the facts in the case before us and those before the Supreme Court in Dhun Kapadia's case. We are, therefore, bound by the principles laid down by the Supreme Court in that case and we propose to decide this reference on the basis of those principles".

10. It therefore set aside the order of the AO and the order passed by the CIT (A) and directed the AO to allow the carry forward of business loss of Rs.1,94,54,400/- to subsequent years.

11. We find that the fall in the value has been worked out based on the market quotation in Ludhiana Stock Exchange, wherein prior to the right issue on 13.10.1992, last-cum-right price of the shares were Rs.610/- per share and the first Ex.-right price of the share on 11.11.1992 was Rs.400/- per share, resulting in fall in the price of the share by Rs.210/- per share. This

aspect has not been disputed by the revenue. We further find that the judgments passed by the Hon'ble Supreme Court and Bombay High Court have been followed by this Court in the case of Naveen Jindal vs. ACIT (2006) 280 ITR 608, wherein identical issue was decided in favour of the assessee.

12. Keeping in view that the question of law stand already decided and no substantial question of law arises for fresh adjudication before this Court, the appeal is dismissed.

13. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

23.07.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No