

## **Commissioner Of Income-Tax, U.P vs M/S. Madan Gopal Radhey Lal on 6 September, 1968**

**Equivalent citations: 1969 AIR 840, 1969 SCR (2) 7, AIR 1969 SUPREME COURT 840**

**Author: J.C. Shah**

**Bench: J.C. Shah, V. Ramaswami, A.N. Grover**

PETITIONER:  
COMMISSIONER OF INCOME-TAX, U.P.

Vs.

RESPONDENT:  
M/S. MADAN GOPAL RADHEY LAL

DATE OF JUDGMENT:  
06/09/1968

BENCH:  
SHAH, J.C.  
BENCH:  
SHAH, J.C.  
RAMASWAMI, V.  
GROVER, A.N.

CITATION:  
1969 AIR 840                      1969 SCR (2) 7  
CITATOR INFO :  
R                      1986 SC1483 (4)

ACT:  
Income-tax-Assessee, dealer in stocks and shares-Receipt of bonus shares in proportion to equity holding-Sale of bonus shares-Whether sale proceeds profits of business or capital. Practice-No application under income-tax Act, 1922, s. 66(1), challenging finding of fact of Tribunal-Challenge of Tribunal's conclusion-Jurisdiction of High Court to examine whether findings on which conclusion was based are supported by evidence.

HEADNOTE:  
The assessee, a dealer in shares and securities, held as part of its stock-in-trade, shares of certain companies.

The assessee 'received from those companies, at different times, bonus shares proportionate to its equity holding. On the question whether the sale proceeds of such bonus shares are liable to be included in the assessee's total income as profits of the share-dealing business, the Tribunal found that the sale proceeds of the bonus shares were received by the assessee in the course of and as part of its business in shares, and held that the proceeds were, on that account, taxable as income. The High Court, on reference, held in favour of the assessee.

In appeal to this Court,

HELD: (1 ) A trader may acquire a commodity in which he is dealing, for, his own purposes, and hold it apart from the stock-in-trade of his business. There is no presumption that such an acquisition, even if it is an accretion to the stock-in-trade of the business, is an acquisition for the purpose of his business: in each case the question is one of intention to be gathered from the evidence of conduct and dealings by the acquirer with the commodity. Bonus shares given by a company in proportion to the holding of equity capital by a shareholder are, under the income-tax Act at the relevant time (1946--50), liable to be treated as capital and not as income. Therefore, the bonus shares received by the assessee did not become part of its stock-in-trade merely because they were accretion to its stock-in-trade. [10 C, F, G]

C.I.T. Central Bombay v. Maneklal Chunilal, I.T. Ref. No. 16 of 1948 (Bombay High Court), disapproved.

C.I.T., Bengal v. Mercantile Bank of India, 4 I.T.R. 239(P.C.), applied.

Commissioner of Inland Revenue v. John Blotter, 8 T.C. 101 (H.L.) referred to.

(2) In the present case, however, the Tribunal found that the bonus shares, received as capital, were converted by the assessee into its stock-in-trade and were not retained as a capital asset. The question posed for the opinion of the High Court was no whether the finding of the Tribunal was rounded on evidence, but whether the sale proceeds of the bonus shares were of the nature of revenue. On this question, when the assessee had not filed any application under s. 66(1) of the Income-tax

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Act, 1922, expressly raising the question about the validity of the Tribunal's finding of fact, the High Court must accept the finding and cannot enquire whether the finding is supported by evidence or not. The High Court was therefore, not justified in interfering with the finding and conclusion of the Tribunal. [11 D, F-H]

India Cements Ltd. v. C.I.T., 60 I.T.R. 52 (S.C.) followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1764 to 1767 of 1967.

Appeals from the judgment and decree dated January 17, 1964 of the Allahabad High Court in Income-tax Reference No. 193 of 1955.

C.K. Daphtary, Attorney-General, R. Gopalakrishnan, R.N. Sachthey and B.D. Sharma, for the appellant (in all the appeals).

M.C. Chagla and R.P. Kapur for 1. N. Shroff, for the respondent (in C.A. No. 1764 of 1967).

R.P. Kapur for 1. N. Shroff, for the respondent (in C.As. Nos. 1765 to 1767 of 1967).

The Judgment of the Court was delivered by Shah, J. M/s. Madan Gopal Radhey Lal hereinafter called the assessee--deal in shares and securities. They held in the relevant years as part of their stock-in-trade shares of certain companies. The assessee received from the Companies at different times bonus shares proportionate to their equity holding. From time to time the assessee sold the bonus shares received by them. The Income-tax Officer brought to tax Rs. 55,607 in the assessment year 1946- 47; Rs. 41,625 in the assessment year 1948-49; Rs. 1,43,050 in the assessment year 1949-50 and Rs. 33,170 in the assessment year 1950-51 being the sale proceeds of the bonus shares, holding that those receipts represented income of the assessee arising from their business in shares. The order of the Income-tax Officer was confirmed by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal.

At the instance of the assessee, the Tribunal referred the following question of law to the High Court of Allahabad for opinion:

"Whether the sale proceeds of bonus shares which had been issued in respect of shares which formed part of the assessee's stock-in-trade of the share dealing business are liable to inclusion in the assessee's total incomes for the respective years as profits of the share dealing business?"

The High Court called for a supplementary statement of case. Full Bench of the High Court (Manchanda, J., dissenting) answered the question in the negative. The Commissioner has appealed to this Court with certificate granted by the High Court.

The Articles of Association of the various Companies which had issued the bonus shares. are not on the record. It has been assumed that the Companies had issued bonus shares in exercise of the power conferred upon them by the Articles of Association, and no argument has been raised in that behalf. A company when authorised by its Articles of Association may convert its accumulated profit into capital and then utilise such profit by issuing additional shares. by way of bonus to the shareholders. Under the Income-tax Act, 1922, at the relevant time, issue of such bonus shares by capitalisation of the accumulated profit was not treated as distribution of dividend. In

commissioners of Inland Revenue v. John Blott<sup>(1)</sup> the House of Lords (by majority) held that bonus shares issued by a Company in exercise of the power under the Articles of Association are not dividend, and therefore not income of the shareholder. Viscount Haldane observed at p. 126:

" ..... I think that it is a matter of principle within the power of an ordinary joint stock company with articles such as those in the case before us to determine conclusively against the whole world whether it will 'withhold profits it has accumulated from distribution to its shareholders as income, and as an alternative, not distribute them at all, but apply them in\_ paying up the capital sums which shareholders electing to take up unissued shares could otherwise have to contribute. If this is done, the money so applied is capital and never becomes profit in the hands of the shareholder at all. What the latter gets is no doubt a valuable thing. But it is a thing in the nature .of an extra share certificate in the company. His new shares do not give him an immediate right to a larger amount of the existing assets. These remain where they were. The new shares simply confer a title to a larger proportion of the surplus. assets if and when a general distribution takes place, as in the winding up. In these assets, the undistributed profits now allocated to capital, will be included profits which will be used by the company for its business, but henceforth as part of its issued share capital."

Similarly Lord Cave observed at p. 135:

"The profits remained in the hands of the Company as capital, and the shareholders received a paper certificate as evidence of his interest in the additional capital (1) 8 T.C. 101.

2Sup. C.I./69--2 so set aside. The transaction took nothing out of the Company's coffers, and put nothing into the shareholders' pockets; and the only result was that the Company, which before the resolution could have distributed the profit by way of dividend or carried it temporarily to reserve, came thenceforth under an obligation to retain it permanently as capital. It is true that the shareholder could sell his bonus shares, but in that case he would be realising a capital asset producing income, and the proceeds would not be income in his hands."

The principle of the case was affirmed by the Judicial Committee in a case arising under the Indian Income-tax Act, 1922: Commissioner of Income-tax, Bengal v. Mercantile Bank of India and Others<sup>(1)</sup>. Accordingly bonus shares given by a Company in proportion to the holding of equity capital by a shareholder are, in the absence of any express provision to the contrary liable to be treated as capital and not income.

We are unable to agree with the judgment of the Bombay High Court (to which reference was made by the Tribunal) in Commissioner of Income-tax, Central Bombay v. Maniklal Chunnifat and Sons Ltd., Bombay--I.T. Reference No. 16 of 1948 that bonus shares received by a shareholder who carries on business in shares and securities "ipso facto become accretion to his stock-in-trade." Bonus shares would normally be deemed to be distributed by the Company as capital and the shareholder

receives the shares as capital. The bonus shares are accretions to the shares in respect of which they are issued, but on that account those shares do not become stock-in-trade of the business of the shareholder. A trader may acquire a commodity in which he is dealing for his own purposes, and hold it apart from the stock-intrade of his business. There is no presumption that every acquisition by a dealer in a particular commodity is acquisition for the purpose of his business: in each case the question is one of intention to be gathered from the evidence of conduct and dealings by the acquirer with the commodity.

Bonus shares having been received by the assesseees in respect of their stock-in-trade did not therefore become part of their stock-in-trade, merely because they were accretions to the stock-intrade. The bonus shares were received as capital: they could be converted by the assesseees into their stock-in-trade or retained as their capital asset.

The Tribunal observed in paragraph-5 of its order that "the assessee deals in shares and the sales proceeds of the bonus shares was (were) received by him in the course and as part of his share (1) 4 I.T.R. 239.

dealing business. The amount received by the assessee is therefore part of his profit from the share dealing business and is liable to tax as such". Counsel for the assesseees contended that the Tribunal has not referred to any evidence in support of its conclusion and has made a cryptic statement which is not capable of the interpretation that the assesseees had converted the bonus shares into their stock-in-trade.. If there is no presumption that the accretion to the stock-in-trade necessarily gets incorporated into the stock-in-trade, says Mr. Chagla, in the absence of evidence showing that the bonus shares were treated by the assesseees as stock.in-trade the finding of the Tribunal cannot be sustained Counsel invited our attention to the supplementary statement of case in which the Tribunal recorded that in the copies of balance sheets filed by the assesseees as of February 14, 1948, March 8, 1949 and March 8, 1950, the shares did not find a place and that the sale proceeds of the bonus shares were credited in the capital account of the assesseees for the four years in question on the last dates of the relevant accounting years. But the Tribunal has found that the sale proceeds of the bonus shares were received in the course and as part of their business in shares and were on that account taxable. It is. somewhat unfortunate that the Tribunal has not set out in detail the facts found by it and the inference drawn therefrom. Even in the supplementary statement no attempt has been made to set out the facts on which the conclusion was based. The orders of the Income-tax Officer and the Appellate Assistant Commissioner are also not before us. The mere circumstance that in the copies of the balance- sheets tendered by the assesseees the bonus shares did not find a place has, in our judgment, no importance, and the credit entries in the capital account on the last dates of the respective accounting years in the four years in question also do not support an inference in favour of the assesseees. The question posed for the opinion of the Court was not whether the conclusion of the Tribunal was rounded on evidence, but whether the sale proceeds of the bonus shares were of the nature of revenue. On this question an inquiry into whether the conclusion of the Tribunal is supported by the evidence cannot be made. In *India Cements Ltd. v. Commissioner of Income-tax(x)* this Court observed that in a reference under the Income-tax Act the High Court must accept the findings of fact made by the Appellate Tribunal, and it is for the person who has applied for a reference to challenge these findings first by an application under s.

66( 1 ). If he has failed to file an application under s. 66(1 ) expressly raising the question about the validity of the findings of fact, he is not entitled .to urge before the High Court that the findings are (1) 60 I.T.R. 52 (S.C.) vitiated for one reason or another. 'The principle of that case applies here. It is not open to the assesseees to contend on the question, raised that the finding of the Tribunal is not supported by evidence.

The answer recorded by the High Court is discharged'. The answer to the question submitted is in the affirmative. No order as to costs of the appeal to this Court and of the reference' in the High Court.

V.P.S.

Appeal allowed.