

## **Commissioner Of Income Tax, Culcutta vs Karam Chand Thapar & Bros. (P) Ltd on 14 February, 1989**

**Equivalent citations: 1989 AIR 1045, 1989 SCR (1) 638, AIR 1989 SUPREME COURT 1045, 1989 TAX. L. R. 370, (1989) 1 JT 304 (SC), (1989) 43 TAXMAN 45, 1989 93 (2) TAXATION 32, 1989 (1) JT 304, (1989) 93 TAXATION 32, (1989) 176 ITR 535, 1989 (2) SCC 31, (1989) 65 COMCAS 728, (1989) 1 COMLJ 284**

**Author: M.H. Kania**

**Bench: M.H. Kania, L.M. Sharma**

PETITIONER:

COMMISSIONER OF INCOME TAX, CULCUTTA

Vs.

RESPONDENT:

KARAM CHAND THAPAR & BROS. (P) LTD.

DATE OF JUDGMENT 14/02/1989

BENCH:

KANIA, M.H.

BENCH:

KANIA, M.H.

SHARMA, L.M. (J)

CITATION:

1989 AIR 1045	1989 SCR (1) 638
1989 SCC (2) 31	JT 1989 (1) 304
1989 SCALE (1) 421	

ACT:

Constitution of India, 1950--Article 136--Tribunal's decision on question of fact--Such a finding not to be interfered with unless it is based on irrelevant material or perverse.

Income-tax Act, 1961 : Section 256--Reference to High Court--Question of fact or law--Assessee claiming loss on sale of shares--Whether capital loss, or business loss or genuine or bogus--Only question of fact--Tribunal's decision final--Tribunal need not specifically state its taking into account the cumulative effect of the circumstances--Court not to interfere unless Tribunal's decision is based on irrelevant consideration or perverse.

HEADNOTE:

For the assessment year 1959-60, the Income Tax Officer disallowed the loss claimed by the Respondent-assessee, on the sale of certain shares, to its allied concern, on the grounds that the sale price was much below the market quotation and that the motive behind the transactions was to set off the loss against the profits and hence the transactions were not genuine.

On appeal by the assessee the Appellate Assistant Commissioner held that the losses on both the transactions cannot be held to be business losses.

On a further appeal by the assessee, the Tribunal observed that there was nothing to show that the transactions in question had anything to do with the control of the companies concerned. It also relied upon the circumstance that the sales were at the market rates or going rates and held that there was no question of making a bogus loss. Based on these facts and circumstances, the Tribunal held that the losses in respect of the sales of the shares in question, were liable to be allowed as business losses.

639

The Commissioner of Income Tax made an application to the Tribunal for referring certain questions for the determination of the High Court. The Tribunal declined to refer the questions on the ground that they were not questions of law, which deserved to be referred to the Court for determination. This order of the Tribunal was confirmed by the High Court.

This appeal, by special leave, is against the said order of the High Court.

Dismissing the appeal,

HELD: 1. Where the Tribunal has come to the conclusion that the loss incurred by the assessee in the sale of shares held by it was a trading loss and it is not the case of the Department that in arriving at its decision the Tribunal had taken into consideration any irrelevant material or failed to take into consideration any relevant material, there is no room for interference by the court. It is well settled that the Tribunal is the final fact finding body. The questions whether a particular loss is a trading loss or a capital loss and whether the loss is genuine or bogus are primarily questions which have to be determined on the appreciation of facts. The findings of the Tribunal on these questions are not liable to be interfered with unless the Tribunal has taken into consideration any irrelevant material or has failed to take into consideration any relevant material or the conclusion arrived at by the Tribunal is perverse in the sense that no reasonable person on the basis of the facts before the Tribunal could have come to the conclusion to which the Tribunal has come. [645B-D]

C.I.T., Bihar & Orissa v. Dalmia Jain & Co. Ltd., [1972] 83 ITR 438, relied on.

2. It is equally well settled that the decision of the Tribunal has not to be scrutinised sentence by sentence merely to find out whether all facts have been set out in detail by the Tribunal or whether some incidental fact which appears on record has not been noticed by the Tribunal in its judgment. If the court, on a fair reading of the judgment of the Tribunal, finds that it has taken into account all relevant material and has not taken into account any irrelevant or impermissible material in basing its conclusions, the decision of the Tribunal is not liable to be interfered with, unless, of

640

course, the conclusions arrived at by the Tribunal are perverse -[645DF]

3. In the instant case, the Tribunal has taken note of all the relevant circumstances which appear on record and which were referred to by the Departmental Representatives before the Tribunal. It has not taken into account any material which could be said to be irrelevant in arriving at its conclusions. In considering whether the shares of Bharat Starch & Chemicals Ltd. and Greaves Cotton & Co. Ltd. were held by the assessee as stock-in-trade or as capital, the Tribunal has taken into account the fact that the assessee was earlier treated by the Department as a dealer in shares, that circumstances cannot be regarded as irrelevant. The decision arrived at by the Tribunal cannot be said to be perverse. [645F-H]

Karam Chand Thapar & Bros. (P) Ltd. v. Commissioner of Income-tax (Central), Calcutta, [1971] 82 I.T.R. 899; referred to.

4. It is not necessary for the Tribunal to state in its judgment specifically or in express words that it has taken into account the cumulative effect of the circumstances or has considered the totality of facts, as if that were a magic formula; if the judgment of the Tribunal shows that it has, in fact, done so, there is no reason to interfere with the decision of the Tribunal. [646B-C]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1119(NT) of 1975.

From the Judgment and Order dated 16.12.1974 of the Calcutta High Court in I.T. Reference No. 256 of 1974. S.C. Manchanda, Ms. A. Subhashini and K.C. Dua, for the Appellant.

Dr. D.-Pal, Ms. M. Seal, Ms. Mridula Ray and H.K. Dutt, for the Respondents.

The Judgment of the Court was delivered by KANIA, J. This is an appeal filed by the Commissioner of Income-tax, Calcutta, by Special Leave against an order of a Division Bench of the Calcutta High

Court declining to direct the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") to refer to the Court for determination of certain questions raised by the Commissioner of Income-tax.

It is necessary to set out a few facts for the appreciation of the controversy in this appeal. In its agreement for the Assessment Year 1959-60 the respondent-assessee claimed deductions inter alia in respect of the loss of the sale of certain shares of Bharat Starch & Chemicals Ltd. and Greaves Cotton & Co. Ltd. for the relevant previous year. The respondent-assessee had sold in the relevant previous year 2500 shares of Bharat Starch & Chemicals Ltd. to M/s K.C. Thapar & Sons Ltd., a company belonging to the same group. These shares were purchased on 22nd February, 1958 and were sold on 31st March, 1959. The loss claimed was of Rs.26,465. The Income-tax Officer concerned disallowed this case on the ground that the sale price was shown at Rs.2.50 per share whereas the market quotation on 31st March, 1959 was Rs.8.06 per share. The Income-tax Officer also relied upon the circumstances that the shares had been sold to a company which was an allied concern of the assessee, that is, belonging to the Thapar group. The Income-tax Officer took the view that the sale had been affected only to enable the assessee to claim the loss and could not be allowed as genuine. The respondent-assessee had also sold 3000 shares of Greaves Cotton & Co. Ltd. on 4th February, 1959 to M/s K.C. Thapar & Sons Ltd., and claimed a loss of Rs.47,878.55p on this transaction. The Income-tax Officer held that these shares had also been sold to a company belonging to the Thapar group and under the control of that group. The Income-tax Officer took the view that the motive for selling the aforesaid shares and some other shares was to make losses and set them off against the profits and these transactions could not be considered to be in the normal course of business. He held that this type of transaction could not be regarded as genuine and disallowed the claim.

The assessee preferred an appeal to the Appellate Assistant Commissioner against the order of the Income-tax Officer. In respect of the sale of the shares of Bharat Starch & Chemicals Ltd. the Appellate Assistant Commissioner accepted that the market quotation of these shares at Rs.8.06 on 31st March, 1959, was a nominal quotation and there was no transaction in these shares at that rate because there was no buyer at that price and that the Income-tax Officer was wrong in relying upon this circumstance to come to the conclusion that the transaction of sale of these shares was not genuine. He also took the view that the Income-tax Officer was in error when he took the view because these shares had changed hands between companies controlled by the same group that fact vitiated the sale. He, however, took the view that the disallowance was correct as the shares were, in fact, purchased at Rs.2.50 per share and sold at the same rate, that is, he disagreed with the average cost worked out by the assessee and pointed out that the basis on which such average cost was worked out had not been shown to him. He further took the view that the 25,000 shares of this company sold by the assessee constituted a large block and was connected with the acquiring of control over the Bharat Starch & Chemicals Limited and hence the loss should be regarded as an investment loss and not a business loss. As far as the loss on the sale of shares of Greaves Cotton & Co. Ltd. was concerned, after referring to the ground on which the Income-tax Officer had disallowed this loss the Appellate Commissioner took the view that the holding of these shares could be reasonably attributed to the investment portfolio and hence, the said loss was a capital loss and not a business loss or a revenue loss. He further referred to the fact that the shares of this

company, namely, Greaves Cotton & Co. Ltd. were not quoted in the stock exchange market. On the basis of these circumstances he disallowed the loss.

The assessee went in further appeal to the Tribunal. The Tribunal relied upon the fact that in the earlier years, the profits made by the assessee on the sale of shares had been treated as business income and this would show that the assessee in the earlier years had been regarded as a dealer in shares. The Tribunal rightly observed that under these circumstances, there was no reason why the assessee should not be treated as a dealer in shares in the relevant previous year either. The Tribunal also pointed out that nothing was shown on the record which would suggest that the acquisition and purchase of these shares was for anything other than normal commercial purposes or that the sales were not made in the ordinary course of business. The Tribunal held that the mere fact that the shares have been sold to a company belonging to the same group and under the same control would not be conclusive to show that the transactions were bogus or not in the normal course of business or were for an extra commercial consideration. It was pointed out to the Tribunal by the Departmental Representative concerned that these shares were shown by the assessee as investments in the balance sheet. The Tribunal pointed out that this circumstance would not necessarily lead to a conclusion that the shares were held in the investment portfolio and not as stock-in-trade and in this connection, the Tribunal placed reliance on the decision of this Court in *Karam Chand Thapar and Bros. P. Ltd. v. Commissioner of Income-tax (Central), Calcutta*, [1971] 82 I.T.R. 899 wherein it was held that the circumstances that the assessee had shown certain shares as investment shares in its books of account as well as its balance sheet was by itself not a conclusive circumstance indicating that the shares were held on investment account or capital account but it was a relevant circumstance on which the Tribunal could rely for drawing an inference that the loss on the sale of the said shares was a capital loss. It may be noted that this decision shows that although the manner in which shares are shown in the balance sheet or books of account of the assessee is relevant, it is not a conclusive factor in determining whether the shares were held as an investment or as stock-in-trade. However, the view taken by this Court in that case was that the loss was a capital loss as the sale of the shares was made after a long period of over ten years. In the case before us, however, the shares have been sold within a much shorter period which would suggest, although by no means conclusively, that the sales were in the nature of a business transaction. The Tribunal also pointed out that the circumstances that the transactions were between companies in which Thapar group had a controlling interest and also in respect of shares of companies belonging to the same group by themselves would not support the conclusion that the transactions were stage-managed, although it might arouse suspicion and call for a closer scrutiny. In respect of both the said lots of shares, the Tribunal pointed out that there was nothing to show that the purchase of these shares had anything to do with the control of the companies concerned. The Tribunal relied upon the circumstances that the sales were at the market rates or going rates and hence, there was no question of making a bogus loss. On the basis of these conclusions, the Tribunal held that the losses in respect of the sales of shares of Bharat Starch & Chemicals Ltd. as well as of Greaves Cotton & Co. Ltd. were liable to be allowed as business losses.

From this decision of the Tribunal, the Commissioner of Income-

tax applied to the Tribunal for referring certain questions for the determination of the High Court. The Tribunal passed an order referring one question to the Court for determination but declined to refer the other questions on the ground that the decision of the Tribunal was arrived at purely on the appreciation of the facts brought out in evidence and that these questions, in respect of which the Commissioner wanted a reference, were not questions of law which deserved to be referred to the court for determination. From this decision of the Tribunal, the Commissioner applied to the High Court for directing the Tribunal to refer the said questions also to the Court for determination. The High Court by its impugned judgment rejected the said application. The present appeal is directed against the said decision of the High Court.

When the appeal reached hearing before us, Mr. Manchanda, learned counsel for the Commissioner stated that he pressed the appeal only in respect of two questions which are as follows:

1. Whether, on the facts and in the circumstances of the case, the Tribunal had any evidence and had not relied on irrelevant or partly irrelevant materials in holding that the transactions entered into by the assessee in the purchase and sale of shares of Bharat Starch & Chemicals Ltd. and Greaves Cotton & Co. Ltd. were genuine commercial transactions and whether such finding was not otherwise unreasonable or perverse?

2. Without prejudice to Question No. (1), whether, on the facts and in the circum-

stances of the case, the Tribunal's finding that the assessee entered into the transactions of purchase and sale of 25000 shares of Bharat Starch & Chemicals Ltd. and 3000 shares of Greaves Cotton & Co. Ltd. in the course of its business as a dealer in shares was based on no evidence or was otherwise unreasonable or perverse?

In deciding the question whether the Tribunal should have referred the aforesaid two questions to the court for determination, there are certain well settled principles which have to be borne in mind. In Commissioner of Income-tax, Bihar and Orissa v. Dalmia Jain & Co.

Ltd., [1972] 83 I.T.R. 438 this Court held that whether a particular loss is a trading loss or a capital loss is primarily a question of fact. Where the Tribunal has come to the conclusion that the loss incurred by the assessee in the sale of the shares held by it was a trading loss and it is not the case of the Department that in arriving at its decision the Tribunal had taken into consideration any irrelevant material or failed to take into consideration any relevant material, there is no room for interference by the court. It is well settled that the Tribunal is the final fact finding body. The questions whether a particular loss is a trading loss or a capital loss and whether the loss is genuine or bogus are primarily questions which have to be determined on the appreciation of facts. The findings of the Tribunal on these questions are not liable to be interfered with unless the Tribunal has taken into consideration any irrelevant material or has failed to take into consideration any relevant material or the conclusions arrived at by the Tribunal is perverse in the sense that no reasonable person on the basis of facts before the Tribunal could have come to the conclusion to

which the Tribunal has come. It is equally settled that the decision of the Tribunal has not to be scrutinised sentence by sentence merely to find out whether all facts have been set out in detail by the Tribunal or whether some incidental fact which appears on record has not been noticed by the Tribunal in its judgment. If the court, on a fair reading of the judgment of the Tribunal, finds that it has taken into account all relevant material and has not taken into account any irrelevant material in basing its conclusions, the decision of the Tribunal is not liable to be interfered with, unless, of course, the conclusions arrived at by the Tribunal are perverse. Keeping these principles in mind in the present case, we find that the Tribunal has taken note of all the relevant circumstances which appear on record and which were referred to by the Departmental Representatives before the Tribunal. It has been taken into account any material which could be said to be irrelevant in arriving at its conclusions. In considering whether the shares of Bharat Starch & Chemicals Ltd. and Greaves Cotton & Co. Ltd. were held by the assessee as stock-in-trade or as capital, the Tribunal has taken into account the fact that the assessee was earlier treated by the Department as a dealer in shares, as pointed out by Mr. Manchanda, but that circumstance cannot be regarded as irrelevant in view of the decision to which we have already referred. It is also not possible to say that the decision of the Tribunal is perverse. Mr. Manchanda strongly contended before us that the Tribunal has nowhere stated in terms that it has taken into consideration the totality of circumstances or the cumulative effect of the circumstances pointed out to the Tribunal and hence the matter should be remanded to the Tribunal. In our view, there is no substance in this submission. It is true that the Tribunal has not stated in terms that it has considered the cumulative effect of the circumstances pointed out to the Tribunal, but, on the other hand, a plain reading of the judgment of the Tribunal makes it clear that the Tribunal has, in fact, taken into account the cumulative effect of the circumstances on record before the Tribunal. It is not necessary for the Tribunal to state in its judgment specifically or in express words that it was taken into account the cumulative effect of the circumstances or has considered the totality of facts, as if that were a magic formula; if the judgment of the Tribunal shows that it has, in fact, done so, there is no reason to interfere with the decision of the Tribunal. In our opinion, there is no merit in this appeal and it must fail. In the result, the appeal fails and is dismissed with costs.

G.N.

Appeal dismissed.

7647