

Dwarkadas Kesardeo Morarka vs Commissioner Of Income-Tax, Central ... on 25 January, 1961

Equivalent citations: [1962]44ITR529(SC)

Bench: J.C. Shah, J.L. Kapur, M. Hidayatullah

JUDGMENT

Shah, J.

1. This is an appeal with special leave under article 136 of the Constitution against the order of the High Court of Judicature at Bombay, refusing to call for a statement of case from the Income-tax Appellate Tribunal under section 66(2) of the Income-tax Act. The appellants are a registered firm carrying on the business of money- lending and speculation in silver and shares. The partners of the appellants firm were also partners of Messrs. Morarka & Co., who were the managing agents of the Sholapur Spinning and Weaving Company Ltd.

- hereinafter called the Sholapur Mills. The firm commenced business in August, 1942. In Samvat year 2000 (November, 1943, to October, 1944) the appellants purchased seventeen ordinary shares of the Sholapur Mills and thereafter they purchased 82 more ordinary shares between November, 1944, and October, 1948.

2. By November, 1948, the appellants held 99 ordinary shares. The appellants also purchased at diverse times 6,780 preference shares of the Sholapur Mills. All these shares were entered in the books of account of the appellants as stock-in-trade and valued accordingly at the end of each accounting period. During all these years, not a single shares, ordinary or preference, was sold by the appellants. The following table sets out the profit and loss in respect of these shares calculated by the appellants according to the method of valuation of stock adopted by the appellants.

Year of Account shares (Maru)	Assessment year	Ordinary shares Rs.	Preference Rs.
2000-01	1945-46	Loss 30,802	Nil.
2001-02	1946-47	Loss 35,468-8-0	Nil.
2002-03	1947-48	Profit 72,545	Nil.
2003-05	1949-50	Loss 3,21,831	Loss 12,020

3. The appellants submitted their returns for income-tax in respect of the assessment years 1945-46, 1946-47 and 1947-48 with the Income-tax Officer respectively on July 27, 1948, November 11, 1948,

and May 23, 1949. In the proceedings for assessment of tax in the assessment years 1945-46 and 1946-47, the Income-tax Officer disallowed the loss claimed holding that the shares formed the appellants' capital investment. In the assessment year 1947-48, the Income-tax Officer excluded from the return the amount of profit alleged to have resulted to the Appellate Assistant Commissioner by three orders dated May 4, 1951, the shares of the Sholapur Mills were held to be stock-in-trade and the profits or losses computed according to the method of valuation adopted by the appellants were directed to be taken into account in assessing the taxable income. These orders were not challenged in appeals to the Income-tax Appellate Tribunal.

4. In the assessment year 1948-49, the appellants did not furnish return and they were assessed to tax under section 23(4) of the Income-tax Act. For the assessment year 1949-50, the appellants furnished their return claiming that they incurred a loss of Rs. 3,33,851 in the shares of the Sholapur Mills. This was computed on the alleged difference between the market value of the shares at the close of the previous year of account and the market value at the end of the accounting period, the shares being treated as stock-in-trade. The Income-tax Officer found that the appellants had inflated the loss by Rs. 1,85,000 and that the shares being capital investment and not stock-in-trade, the loss could not be allowed as a revenue deduction. The Appellate Assistant Commissioner disagreed with the view of the Income-tax Officer and held that the shares were the stock-in-trade of the appellants, but agreeing with the Income-tax Officer he held that the loss had been inflated by Rs. 1,85,000. Against this order, the Income-tax Officer appealed to the Income-tax Appellate Tribunal which reversed the order of the Appellate Assistant Commissioner and restored the order of the Income-tax Officer. The Tribunal held that the mere fact that in the previous years the shares were treated as stock-in-trade and the profits and losses in respect thereof were included in the taxable income of the appellants did not preclude the Tribunal from arriving at the conclusion that the shares were capital investment. They substantially confirmed the view of the Income-tax Officer on the facts found. An application submitted by the appellants for a reference under section 66 (1) of the Income-tax Act of the following questions was rejected by the Tribunal :

"(1) Whether the Tribunal misdirected itself in law and/or acted without any evidence in finding that the investment of the assessee in the shares of the Sholapur Mills was a capital investment and not its stock-in-trade ?

(2) Whether in any event in view of the assessments made for the years 1945-46, 1946-47 and 1947-48 and the Appellate Assistant Commissioner's order for these three years, it was open to the department to hold for the assessment years 1949-50 that the said shares do not represent the assessee's stock-in-trade ?

(3) Whether the Tribunal misdirected itself in law in omitting to consider certain material facts which were taken into account by the Appellate Assistant Commissioner and expressly maintained in the Appellate Assistant Commissioner's order, including the fact that the assessee had been holding shares in several other companies as stock- in-trade and this position has been accepted by the department although in those shares there have been preferred with special leave.

5. In our view, the High Court was right in refusing to call for a statement of the case under section 66(2) of the Income-tax Act. The conclusion of the Tribunal was based on inferences of fact raised from materials before the taxing authorities. The conduct of the appellants clearly indicated that even though they were dealing in shares of other companies, the shares of the Sholapur Mills were treated by them as capital investment for the purpose of maintaining their managing agency. The number of shares held by the appellants went on increasing from time to time and not a single share was ever sold. The Tribunal pointed out that the returns for the assessment years 1945-46, 1946-47 and 1947-48 were filed by the appellants after they knew that there were wide fluctuations in the quotation of the shares of that company. They also referred to the circumstance that the appellants were interested in the managing agency of the Sholapur Mills and that every member of the family of the appellants was holding shares

6. The conclusion of the Tribunal was amply supported by evidence. It can not be said that because in the previous years the shares were held to be stock-in-trade, they must be similarly treated for the assessment year 1949-50. In the matter of assessment of income-tax, each year's assessment is complete and the decision arrived at in a previous year on material before the taxing authorities cannot be regarded as binding in the assessment for the subsequent years. The Tribunal is not shown to have omitted to consider the material facts. The decision of the Tribunal was on a question of fact and no question of law arose which could be directed to be referred under section 66(2) of the Income-tax Act.

7. The appeal therefore fails and is dismissed with costs.

8. Appeal dismissed.