

Supreme Court of India

Patiala Biscuit Manufacturers P. ... vs Commissioner Of Income-Tax, ... on 23 July, 1971

Equivalent citations: 1971 82 ITR 812 SC

Author: K Hegde

Bench: A Grover, K Hegde

JUDGMENT K.S. Hegde, J.

1. This appeal is directed against the decision of the High Court of Punjab and Haryana in Income-tax Reference No. 7 of 1963 . The question that was referred to the High Court for its opinion was " Did the Tribunal misdirect itself in law in coming to the finding that the loss of Rs. 4,80,988 arising from the sale of shares was not deductible from the profits of the company ? " The High Court agreeing with the Tribunal came to the conclusion that the loss in question was not a trading loss.
2. The appellant in the case is a private limited company belonging to the Dalmia group of companies. The assessment year with which we are concerned is 1952-53, the relevant previous year ending on December 31, 1951. In the relevant accounting year the assessee incurred a loss of Rs. 4,80,988 as a result of the sale of preference shares held by it in the Rohtas Industries Ltd. which is also a company belonging to the Dalmia group.
3. The question whether a particular loss is a trading loss or not, is not an easy one to decide. That question has to be determined on the facts and circumstances of each case. Normally, the finding of the Tribunal on this question being essentially a finding of fact is not disturbed unless it is shown that the Tribunal has taken into consideration irrelevant circumstances or failed to take into consideration the relevant circumstances. It is not said in this case that the Tribunal has taken into consideration any irrelevant circumstance or that it has failed to take into consideration any relevant circumstance.
4. The main activity of the company was of manufacturing biscuits. Though its memorandum permitted the company to deal in shares, the only occasion on which it dealt with shares is the one with which we are concerned in this case. The shares were purchased by the assessee from a sister concern when that concern. expanded its activities. The shares purchased were preferential shares. The Tribunal has come to the conclusion that in view of the fact that the shares purchased were preference shares carrying a fixed rate of dividend and, therefore, not likely to appreciate in value, that the purchase was not made in open market but was made at the initial expansion of the Rohtas Industries Ltd., that the two companies were interlinked in the sense that they were dominated by the same group of directors and that it was a solitary instance in the history of the company of purchasing of shares, the activity was not a trading activity but it was merely an investment. This finding is not vitiated in any manner.
5. In the result this appeal fails and the same is dismissed with costs.