



* HIGH COURT OF DELHI : NEW DELHI

+ ITA No.385 of 2005

Judgment reserved on: July 21, 2006

% Judgment delivered on: September 22, 2006

M/s. Shiva Gases
S/492/A, Greater Kailash-I,
New Delhi.

..... Appellant

Through Mr. C.S. Agarwal, Sr. Advocate
with Mr. Prakash Kumar

versus

Commissioner of Income Tax
New Delhi.

..... Defendant

Through Mr. R.D. Jolly

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary



MADAN B. LOKUR, J.

The Assessee is aggrieved by an order dated 8th September, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench, 'D' in ITA No.1326/Del/2000 relevant for the assessment year 1996-97.

2. The sole question that has been urged by the Assessee is with regard to disallowance of a loss of Rs.45,50,000/- claimed by it on the sale of its investments being shares in M/s. Bhagwati Gases Limited. The Assessing Officer had concluded that the sales did not represent genuine transactions and that they were manipulated by the Assessee with its sister concerns with a view to reduce its tax liability.

3. The Commissioner of Income Tax (Appeals) disagreed with the Assessing Officer but on an appeal filed by the Revenue, the Tribunal affirmed the view taken by the Assessing Officer and that is how the Assessee is before us.



4. The broad facts of the case indicate that the Assessee sold a large number of shares in M/s. Bhagwati Gases Limited to six of its sister concerns. The sister concerns had directors who were partners or relatives of the partners of the Assessee. The shares were sold at a loss, though of only Re. 1 per share but they were sold on a credit basis sometime in February, 1996. However, the account of the sister concerns were debited only on 31st March, 1996 even though, according to the Assessee, delivery of the shares had been given to the sister concerns much earlier. The transfer deeds in respect of the shares were lodged with M/s. Bhagwati Gases Limited only in April, 1996, that is after the end of the accounting year and by the time the Assessing Officer concluded the assessment proceedings, it was found that the sale price of the shares had not yet been received by the Assessee. The Assessing Officer noted that even though the transactions were credit transactions, no entries were made in the books of the Assessee. Looking to the facts of the case, the Assessing Officer did not find the transactions genuine. As mentioned above, his view was upset by the CIT (A).



5. The Tribunal has considered the facts of the case entirety, which is how it should be.

6. The various facts that have been indicated above go to suggest that the transaction of sale of shares was more or less a make-believe affair. It is unlikely that a prudent businessman would first of all sell shares at a loss even though it may be marginal. Assuming that there were circumstances which caused the Assessee to sell the shares at a loss, on a credit basis, it is unlikely (in the normal course) that an assessee would wait for a couple of years to receive the sale price. In the present case, only a part of the sale price was received by the Assessee and even after a gap of about two years, it did not receive the entire sale price from any of the purchasers. It cannot be forgotten that the purchasers were sister concerns of the Assessee in as much as the relatives or others closely connected with the partners of the Assessee firm were directors in the purchasing companies. It is also odd that even though the sale of shares took place in February, 1996 and physical delivery given, the entries in the books were made only on



31st March, 1996 and the share transfer forms were lodged

M/s. Bhagwati Gases Limited only in April, 1996. This is rather unusual if one takes into consideration that the shares were sold at a loss.

7. Looking to all these facts and circumstances, we cannot find any fault with the view taken by the Tribunal that the transactions were not genuine. There may be one or two facts from which the Assessee may draw support, but if one looks at the overall conspectus and the circumstances of the case, it is not possible to conclude that the inferences drawn by the Assessing Officer and the Tribunal were either unreasonable or not warranted.

8. The Supreme Court has held in *M. Janardhana Rao vs. Joint Commissioner of Income Tax*, (2005) 273 ITR 50 (while relying upon *Sir Chunilal V. Mehta & Sons Ltd. vs. Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314) that the following tests determine whether a substantial question of law



is involved:

- (1) whether directly or indirectly it affects substantial rights of the parties, or
- (2) the question is of general public importance, or
- (3) whether it is an open question in the sense that the issue is not settled by pronouncement of this court or the Privy Council or by the Federal Court, or
- (4) the issue is not free from difficulty, and
- (5) it calls for a discussion for alternative view. There is no scope for interference by the High Court with a finding recorded when such finding could be treated to be a finding of fact.

9. Applying the tests laid down by the Supreme Court, we are of the opinion that no substantial question of law arises for our determination.

10. The appeal is dismissed.

Madan B. Lokur, J

Vipin Sanghi, J

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