



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Delivered on: 28.04.2010

+ **ITA 434/2009**

COMMISSIONER OF INCOME TAX-IV ... Appellant

- versus -

GILLETTE DIVERSIFIED OPERATIONS PVT. LTD. ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Ms Kavita Jha

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J.(ORAL)

1. This is an appeal against the order of the Income Tax Appellate Tribunal dated 30.04.2008, whereby it allowed the appeal filed by the respondent/assessee being ITA No.5342/Del/2004, against the order passed by the Commissioner of Income Tax(Appeals) for the assessment year 2000-2001 and dismissed the Cross Appeal filed by Revenue, being ITA No. 3099/Del/2005.

2. The respondent company, which is engaged in the



business of leasing of equipments, filed a return declaring loss of Rs.4,71,54,210/- for the assessment year 2000-2001. Since 1st January, 2000, the appellant company amalgamated with Gillette Diversified Operations Private Limited (GDOPL). The assessee company had purchased shares of WSIL on 4th April, 1996 for a sum of Rs.7,92,70,381/-. Those shares were sold on 30th December, 1999 for a consideration of Rs.7,88,76,000/-. However, due to application of cost index, the cost of these shares for the purpose of computation of capital gain worked out to Rs.10,11,02,224/-, thereby resulting in capital loss of Rs.2,22,26,224/-.

3. The assessee had also purchased share of GDOPL on 4th April, 1996 for a consideration of Rs.8,40,83,094 and had sold those shares to Gillette Group India Private Limited(GGIPL) on 30th December, 1999 for a sale consideration of Rs.8,36,64,770/-, thereby resulting in loss of Rs.4,18,324/-. However, due to application of cost index, the capital loss on sale of these shares worked out to Rs.2,35,76,735/- The Assessing Officer noticed that the assessee company had outstanding liability of Rs.19.77 crores, used for purchase of shares of group companies. He concluded that the transactions were entered on the same date merely to



create capital loss and was a colourable device for tax avoidance.

4. The Assessing Officer disallowed the capital loss on sale of shares on the ground that these shares were purchased from the funds made available by the group companies and observing that the assessee company had entered into these transactions on the same day only to create capital loss of investment held by it.

5. In the appeal filed by the assessee, Commissioner of Income Tax(Appeals) allowed the loss on account of sale of WSIL shares but upheld the disallowance of loss in respect of shares of GGIPL on the ground that the sale proceeds were used to reduce liabilities prior to amalgamation with GDOPL.

6. While allowing the appeal filed by the assessee and dismissing the cross-appeal filed by the Revenue, the Income Tax Appellate Tribunal noted that no plausible objection had been raised before it to justify disallowance of loss on share of shares of WSIL. The Tribunal, therefore, upheld the order of Commissioner of Income Tax(Appeals), allowing the loss incurred by the assessee on sale of shares of WSIL.

7. As regards sale of shares of GDOPL, which were purchased on 4th April, 1996 and sold to GGIPL on 30th



December, 1999, the Tribunal was of the view that the transaction of sale of these shares was quite similar to the transaction of sale of shares of WSIL. The Tribunal noted that no benefit of capital loss had been taken by the assessee till date by adjusting it against other Long Term Capital Gains. It was also noted that even in the assessment of 2002-2003 the amalgamated company had brought forward the losses of earlier years. The Tribunal, therefore, felt that had the shares been sold as a device to obtain any unfair tax benefit, the assessee company or the amalgamated company would have immediately adjusted it against income from Long-Term Capital Gains. The Tribunal accepted the explanation given by the assessee that Gillette Company having suffered huge losses was not in a position to carry on its manufacturing activities and wanted to reduce its liability, prior to amalgamation by paying all funds to its group. The Tribunal was of the view that it was immaterial whether the loan was due to a group company or to an outsider. The Tribunal took note of the fact that actual loss of sale of shares was only Rs.4,18,324/- and it was only on account of indexation that the amount of capital loss had increased. The Tribunal was of the view that the transaction could not be thrown out merely because it was



carried out a few days before amalgamation of the company.

8. As noted by the Commissioner of Income Tax(Appeals) as well as by the Income Tax Appellate Tribunal, shares in question were held by the assessee company for more than three years before they were sold. The assessee company was very much entitled in law to sell the shares held by it at any time, which it considered to be appropriate for such sale. It is for the holder of the shares and not for the Revenue to decide, when to sell the shares held by it. The CIT(A) was of the view that there was no necessity to sell the shares as the assessee itself had received back share application money or advance for shares from GGIPL/WISL/GDOPL and the sale proceeds were used to reduce liabilities prior to amalgamation of assessee with GDOPL. He was also influenced by the fact that the sale proceeds were used to repay outstanding liability of GGIPL which was a group company. If the sale of shares was not illegal, it could have been made to any one, including a group company. It is immaterial that the purpose of sale of shares was to reduce the outstanding liabilities of the assessee company. There was nothing illegal in the assessee company selling shares held by it, for the purpose of reducing its liabilities. It is also absolutely immaterial that the liabilities of



the assessee company were towards group companies. Similarly, it is also immaterial that the shares sold by the assessee company were of another group company. It is also immaterial as to who the purchaser of the shares was, so long as the shares are not sold at a price which was higher or lower than their fair price and there was no restriction on sale of such shares to a group company. All these factors could have been relevant had the Tribunal found that the transactions undertaken by the assessee company were a colourable device with a view to cause a loss to the Revenue. As noted by the Tribunal, neither the assessee company nor the amalgamated company adjusted the capital loss on account of sale of these shares against any long-term capital gain even till the assessment year 2002-2003. No tax benefit was, therefore, obtained by the assessee company for at least two years after the capital loss was booked by it. Hence, it cannot be said that the transactions in question were a colourable device, meant to gain some unfair tax advantage.

9. The Income Tax Appellate Tribunal being the final fact finding authority, we cannot interfere with the finding recorded by it unless it is shown to be perverse. The appellant has failed to show any perversity in the finding recorded by the



Income Tax Appellate Tribunal. No substantial question of law, therefore, arises for our consideration. The appeal is, accordingly, dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)
JUDGE

APRIL 28, 2010
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