



* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No.791/2009**

Reserved on: 29.07.2011
Pronounced on: 25.11.2011

THE COMMISSIONER OF INCOME TAX **Appellant**

Through: Ms. Rashmi Chopra, Advocate

Versus

RAJENDRA SECLEASE LTD. **Respondent**

Through: Counsel for respondent (presence not given)

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | No |

M.L. MEHTA, J.

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (for short, "the Act") against the order dated 25.4.2008 passed by learned Income Tax Appellate Tribunal ("the Tribunal" for short) in Appeal No.1056/DEL/2006 for the assessment year 2002-2003. The appeal was admitted on the following substantial question of law:

"Whether the learned ITAT erred in law and on merits in restricting the addition on account of difference in



sale consideration of unquoted shares to Rs.1,71,000/- by totally ignoring the value as itself declared by the assessee?”

2. The assessee is a company engaged in the business of sale and purchase of shares, dividends and securities. The Assessee filed income tax returns for the year 2002-03 under Section 143(1) of the Act. The return was put under scrutiny and a notice under Section 143(2) and 142(1) along with questionnaire was issued to the assessee. In the return, the assessee company had shown having sold 2255500 unquoted equity shares of various companies held by it for a total sum of Rs.1145090/-. On perusal of the details by the Assessing Officer, it came to be revealed that all those unquoted shares were sold @ Rs.5 per share. The AO held that all those unquoted shares were sold at much lower price and accordingly, he arrived at a conclusion and added Rs.45975201/- to the income of the assessee company on this account. Simultaneously, he proceeded under Section 271 (I) (C) of the Act against the assessing company. In appeal filed by the assessee, the Commissioner of Income Tax [CIT(A)] allowed the appeal of the assessee and deleted the disallowance of Rs.45975201 made by the Assessing Officer. The order of CIT(A) was upheld by the Tribunal. In confirming the order of CIT(A), the Tribunal held as under:

“By impugned order the CIT(A) deleted the addition by observing that the value of share of unlisted companies depends to a very large extent on future profitability, degree of mobility and the financial needs of the seller and the book value of the assets of the company. In support of book value the assessee has relied upon the CCI guidelines to determine the book value of unlisted shares. In the absence of any specific method for computation of book value of share of unlisted company the guidelines of erstwhile Controller of Capital Issues can form a reasonable



basis for determination of the value of share of unlisted companies. Having alleged that the assessee had received a sum of Rs.4,59,75,201/- it was incumbent on the part of the AO to discharge the burden of providing the same. Further, nothing has been placed on record by the AO to establish the fact that assessee did not receive Rs.4,59,75,201/-. Nothing has been brought on record, which suggest that AO has relied upon on some creditable information/ piece of evidence in proving the addition of Rs.4,59,75,201/-
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3. The revenue is in appeal against the impugned order of the Tribunal. There was no dispute with regard to the fact that all the shares which were sold by the assessee were unquoted. As per the assessee, these shares were sold at the mutually agreed price and sale of these shares was necessitated due to business obligations of the assessee as it had made investments in TRI, and Haryana Fiber Limited which were more demanding and beneficiary for the assessee. There is also no dispute with regard to the fact that all these shares which were sold were stock in trade of the assessee as it was dealing in the business of sale and purchase of shares, dividends, securities, etc and were not mere investments by it. The CIT(A) and the Tribunal have observed that there was nothing gathered by the AO that the market price of these shares were more than the price at which they were sold by the assessee or that the assessee in any way concealed or suppressed the sale price. We do not find any infirmity or perversity in the order passed by CIT(A) or the impugned order passed by the Tribunal.

4. In arriving at the above conclusion, we are also supported from the judgment in *Commissioner of Income Tax, West Bengal v Calcutta Discount Co. Ltd.* wherein it was held as under:



*“The question that, when an assessee transfers some of his stock-in-trade to another person at a price less than the market price, whether that assessee can be considered to have made any profit merely because he has transferred some of his stock-in-trade not at the market price but at a lesser price, came up for consideration before the High Court of Madras in **Sri Ramalinga Choodambikai Mills Ltd. v Commissioner of Income Tax** [(1055) 28 ITR 952. The facts of that case as set out in the head-note are: a limited company sold certain goods showed in its stock-in-price to its managing agency firm and to another firm in which one of its directors was interested. The sales in question were held to be bona fide sales. At the same time it was held that the goods were sold at a concessional rate. The Income Tax Officer sought to tax the assessee therein after computing the profits earned by that firm on the basis of the market price of the goods sold and not the actual price at which those goods were sold. The assessee challenged the said basis. The Tribunal upheld that contention of the assessee. It came to the conclusion that the assessee had, in reality, made no profits at all. The High Court agreed with the conclusion reach by the tribunal. It opined that, in the absence of any evidence to show either that the sales were sham transactions or that the market prices were in fact paid by the purchasers, the mere fact that the goods were sold at a concessional rate to benefit the purchasers at the expense of the company would not entitle the income tax department to assessee the difference between the market price and the price paid by the purchasers, as profits of the company.”*

5. The Division Bench of Madras High Court in the case of *Sri Ramalinga Choodambikai Mills Ltd. v Commissioner of Income Tax* [(1055) 28 ITR 952 held as under:

“in absence of evidence to show either that the sales were sham transactions or that the market prices were



in fact paid by the purchasers; the mere fact that the goods were sold at a concessional rate to benefit the purchasers at the expense of the company would not entitle the Income Tax department to assess the difference between the market price and the price paid by the purchasers, as profits of the company.”

6. The Supreme Court in the case of ***K.P. Vargheese v Avtar Mohan Singh (Mrs.)*** [1982] 136 ITR 645 (Delhi) has held that difference between the market value and the consideration declared was not sufficient, and it was also necessary to show that the assessee had received more than what is declared or disclosed by him as consideration of sale of shares. Even the burden to show this lies on the Department.

7. Having regard to the aforesaid facts and circumstances, we do not find any illegality of perversity in the impugned order. The appeal is dismissed.

**M.L. MEHTA
(JUDGE)**

ACTING CHIEF JUSTICE

November 25, 2011
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