



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

% Judgment delivered on : 21.07.2008

+ ITA No.918/2007, 919/2007, 920/2007 & 1034/2007

**COMMISSIONER OF INCOME
TAX, DELHI-V.**

..... Appellant

-versus-

**RBG INVESTMENT & FINANCE
LTD**

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sanjeev Sabharwal

For the Respondent : Mr. Sampath Krishnan & Mr. K Sampath

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

BADAR DURREZ AHMED, J (ORAL)

1. These four appeals relate to the assessment years 1992-93, 1993-94, 1994-95, & 1995-96 and they are directed against the common order passed by the Income Tax Appellate Tribunal dated 31.01.2007.



2. The issue sought to be raised by the appellant pertains to the arrangement made between the assessee and certain mutual funds such as PNB Mutual Fund, LIC Mutual Fund, & SBI Mutual Fund with regard to subscription of fully convertible debentures, offered as a rights issue by the assessee's sister concern (Steel Tubes India Ltd). Since the assessee held shares in (Steel Tubes India Ltd), an offer was made to it as of right for subscription to fully convertible debentures by Steel Tubes India Ltd. The assessee did not have the wherewithal at that that point of time to subscribe to the said offer. And, even its efforts to raise loans in the ordinary course did not materialise. Therefore, it entered into the said agreements with the aforesaid mutual funds. The agreements being that the mutual funds would undertake to subscribe to the fully convertible debentures subject to the condition that the assessee would buy-back the debentures after conversion after 36 months. So that the mutual funds are fully compensated for subscribing and retaining the fully convertible debentures on behalf of the assessee, the assessee agreed to pay service charges to the mutual funds at pre-determined rates. The question that is sought to be raised by the learned counsel for the appellant is that these service charges which have been allowed



as business expenses under Section 37 (1) of the Income Tax, 1961, by the Tribunal ought not to have been allowed because the same were not wholly and fully incurred for the business of the assessee as a trader in shares. The argument advanced by the learned counsel is that the object behind the said subscription and the buy-back arrangement was to help the sister concern by ensuring that the offer by the sister concern was fully subscribed and not for the business purposes of the assessee itself.

3. The tribunal, after considering the material on record and the arguments advanced on both sides, came to the conclusion that the substance of the agreements between the assessee and the mutual funds was in the nature of a financing arrangement wherein mutual funds were assured fixed rates of returns and the assessee was able to obtain the fully convertible debentures of sale debentures only with a view to make profits. The tribunal also noted that the rights issue was, in fact, over subscribed by 15 % and consequently, the tribunal negated the observations of the Assessing Officer that the entire deal was arranged through the assessee company to ensure the subscription of the rights issue.



4. It is also admitted position that the offer made to the assessee on the basis of shares held by it in Steel Tubes India Ltd constituted only 10% of the entire offer, as noted in the Commissioner of Income Tax (Appeal's) order for the assessment year 1993-94 dated 05.06.2000 in paragraph No. 1.19. Since the offer had been over subscribed by 15 %, it is obvious that the argument advanced by the learned counsel for the appellant that the whole object behind the subscription was to ensure that the sister concern's issue was fully subscribed, cannot be accepted. The tribunal's finding to this effect cannot be faulted.

5. The tribunal also found that the course of action adopted by the assessee was because it appeared to the assessee that in view of the then prevailing market condition, it would make substantial profits by selling the fully convertible debentures after conversion. It is another matter that by the time the debentures were converted and the shares became sale-able, the market crashed because of the infamous Harshad Mehta's scam. The tribunal concluded that this did not entail that such a transaction be construed as a "non business transaction". The tribunal came to the conclusion that the service



charges were allowable expenses under Section 37 (1) of the Income Tax Act 1961, in as much as, they were wholly and exclusively expended for the business of the assessee. This is a finding of the fact. We find no perversity in this finding of the tribunal. No substantial question of law arises for our consideration.

6. These appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 21, 2008
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