
(1984) 19 TAXMAN 128

Delhi High Court

Case No: IT Reference No"s. 104 and 105 of 1976

M.R. Dhawan

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Feb. 16, 1984

Acts Referred:

- Income Tax Act, 1922 - Section 24(1)
- Income Tax Act, 1961 - Section 73(1)

Citation: (1984) 19 TAXMAN 128

Hon'ble Judges: D.P Wadhwa, J; D.K. Kapur, J

Bench: Division Bench

Advocate: G.C. Sharma and Rajinder Madhar, for the Appellant; Wazir Singh, for the Respondent

Judgement

D.K. Kapur, J.

The question referred to us for the assessment years 1961-62 and 1962-63 is as follows :

Whether, on the facts and in the circumstances of the case, the losses claimed by the assessee in the transactions entered in the "difference account" were rightly disallowed u/s 24(1) of the Indian income tax Act, 1922, in respect of the assessment year 1961-62 and u/s 73(1) of the Income- tax Act, 1961, in respect of the assessment year 1962-63 ?

The first part of this question is covered by a Bench decision relating to the same assessee for a number of assessment years 1955-56 to 1960-61 which case is reported as MR. Dhawan & Co. v. CIT ILR 1978 II Delhi 393. In that case, on an analysis of a number of facts, it was held that these transactions were speculative in nature and, therefore, the losses could only be set off against a speculative gain.

On an analysis of the facts, the Bench came to the conclusion that these transactions represented contracts in which physical deliveries were not taken and this was based on

some material produced during those assessments.

2. It was urged by Mr. G.C. Sharma, the learned counsel for the assessee, that in the present case that conclusion would not bind us although the question is the same. He has urged a very interesting question. He submits that in actual fact the "differences account" represents payments to a stock broker, who is a member of the Delhi Stock Exchange, to the exchange. These transactions represent dealings with other members of the stock exchange and are not personal transactions of the assessee himself. It is submitted that if all these transactions are treated as being in the assessee's personal account, then no stockbroker will be safe because he will be taxed in respect of gains made by others and will have the disadvantage of losses made by others not being adjusted in his account. We are sure that if this was the factual position, we would have answered this question referred in favour of the assessee. It cannot be that the personal losses of some other person should be treated as the losses of the assessee. At the same time, the gains made in speculative business on somebody else's account can also not be treated as the gains of the assessee.

3. Unfortunately, we are unable to find out from the statement of case that the "differences account" method represents differences paid to the stock exchange on somebody else's account. Rather, an analysis of the facts would indicate that the differences account was on account of some other type of transactions. In the statement of case, the following passage occurs:

In the first year the amount debited was Rs. 22,561, out of which an amount of Rs. 10,325 was on account of payments to three parties, viz., Miss Pancy Nani- Rs. 2,325, Miss Moogh- Rs. 3,500 and Bhagwati Dass- Rs. 4,500. In the second year, the amount claimed was Rs. 26,748, which included Rs. 4,921 on account of Rani Shashi Prabha, Rs. 2,908 on account of Rani Uma Devi, Rs. 3,804 on account of Miss Jaya Devi, Rs. 3,806 on account of Miss Durga Devi, Rs. 3,801 on account of Nanda Hazoor and Rs. 7,507 on account of Jagdish Shamsheer.

It appears that some of these amounts were disallowed by the ITO.

4. We are unable to find out whether these payments are speculative losses or not. The amounts mentioned appear to be payments to parties other than the stock exchange. In order to ascertain whether they are speculative losses or revenue losses or capital losses or merely bad debts, some other facts are necessary.

5. No doubt, in previous years, this amount was treated as representing speculative losses and this is the assumption on which the case has been decided right up to the Tribunal.

6. The assessee was personally present and he had also produced a ledger account said to be of this year, which contained certain entries relating to this difference account. But, we are unable to find out what was the nature of the transactions from the ledger alone.

7. We would have asked for a further statement of the case if we had been shown the nature of the transactions that were represented in the difference account. However, the assessee was unable to explain the account personally and said that his accountant had left him long ago. In this view of the matter, we cannot come to the conclusion that these differences account were paid to the stock exchange on account of losses, as contended by Mr. Sharma. This requires investigation of further facts which are not available on record. As in previous years, the same account had been held to be speculative or arising out of speculative transactions, we per force have to follow the previous judgment and answer the question referred for the year 1961-62 in favour of the department and against the assessee. The question framed for the assessment year 1962-63 is slightly different in terminology, but actually it is the same. It is whether a set off of one thing can be allowed under another and this is the same subject which is covered by section 24(1) of the Indian income tax Act, 1922. So, the answer has to be same, i.e., if the losses are accepted to be speculative losses, they cannot be set off against other profits. The parties are left to bear their own costs.