

(2012) 06 MAD CK 0205

Madras High Court

Case No: Tax Case (Appeal) No"s. 899 and 900 of 2005

Premier Synthetic Industries

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision: June 4, 2012

Acts Referred:

- Companies Act, 1956 - Section 77
- Income Tax Act, 1961 - Section 143(3), 147

Hon'ble Judges: K. Ravichandra Baabu, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: C.V. Rajan, for the Appellant; T. Ravikumar, for the Respondent

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.

The assessee has preferred these appeals as against the order of the Tribunal relating to assessment years 1987-88 and 1988-89. The above tax case (appeals) are admitted on the following common substantial question of law:

Whether on the facts and circumstances of the case, the Tribunal was right in confirming the disallowance of loss incurred by the appellant arising from purchase and sale of shares?

The assessee herein is a partnership firm. The return originally filed by the assessee was accepted u/s 143(3) of the IT Act. Subsequently, while scrutinising the assessment for the assessment years 1988-89, it was found that the assessee had claimed short-term capital loss on sale of shares for the assessment years 1987-88, which was identical to that of the assessment years 1988-89. Accordingly, the assessment for assessment years 1987-88 was sought to be reopened u/s 147 of the IT Act. The assessee went on appeal before the CIT(A), who found the modus operandi adopted to purchase the shares of the Premier Mills Ltd. and subsequent sale of the same to a sister concern of the Premier Mills Ltd., were all colourable

devices, as such, the claim of capital loss was rejected. Aggrieved by the same, the assessee went on appeal before the Tribunal, which remanded the matter back to the officer for a fresh consideration based on the records. As far as the assessment years 1988-89 is concerned, the facts are one and the same. It is seen from the order of the assessing authority that after remand order by the Tribunal, the assessee was called upon to produce the records regarding the transactions of purchase of shares of Premier Mills Ltd. from Unit Trust of India, which were subsequently sold by the assessee to the sister concern by name M/s. Belathur Investments (P) Ltd.

2. A perusal of the order of the ITO shows that initially the assessee had 54,390 shares in M/s. Premier Mills Ltd. in the name of Capricorn General Finance (P) Ltd., a partner of the assessee firm. Subsequently, the assessee purchased the shares of Premier Mills Ltd. from the Unit Trust of India at a cost of Rs. 30 per share. The shares purchased at Rs. 30 were subsequently sold within a short span of time to M/s. Belathur Investments (P) Ltd. at Rs. 8.50 and as on 1st Sept., 1988 the total number of shares held by the company was once again restored to 54,390 shares only. It is a matter of record that the shares of the Premier Mills Ltd. at the time of purchase of shares were quoted at Rs. 8.50 only. It is seen from the assessment order that Jagadish Chandran, who happened to be the managing director of Premier Mills Ltd. had an agreement with Unit Trust of India, which held 200,000 13.5 per cent secured convertible redeemable debentures of Premier Mills, 30 per cent of the face value of each of such debentures converted into two equity shares of the company of the face value of Rs. 10 each at the issue price of Rs. 15 each. By the said agreement, Jagadish Chandran agreed to purchase the shares at the value of Rs. 30 either for himself or for his nominees. Thus, in terms of the agreement, the assessee stated to have purchased shares at the value of Rs. 30 when the price of the share was between Rs. 8.25 and Rs. 8.50 per share and not Rs. 30 or Rs. 39.50 at which they were purchased from Unit Trust of India. On analysis of the materials placed before the AO, it was found that except the letters exchanged between Premier Mills Ltd. and Unit Trust of India, there was absolutely no correspondence exchanged between the assessee and the Unit Trust of India/Premier Mills Ltd./Jagadish Chandran. On the other hand, the letter exchanged between the Premier Mills and the Unit Trust of India would indicate that it was the Premier Mills who were under compulsion to buy back the shares held by the Unit Trust of India. Thus, the shares were ultimately transferred by the appellant to the closely-held company Belathur Investments (P) Ltd., wherein, the managing director of this company Sabitha Chandran is the wife of Jagadish Chandran, the managing director of Premier Mills Ltd., who had entered into an agreement with Unit Trust of India for the purchase of shares. It was also pointed out that the shares purchased by the assessee had also been fully paid for by Premier Mills Ltd. by adjusting the payments against the outstanding dues to the assessee. In the face of the entire correspondence on the purchase of shares from the Unit Trust of India being in the

name of the Premier Mills Ltd., there being no involvement of the assessee in the negotiation process, the ITO came to the conclusion that the assessee was used as a medium for transferring the shares at the real market value to the nominee of the Premier Mills Ltd., so that the company remained under the effective control of its own people and the assessee could reduce its tax liability on the substantial income that had been earned during the assessment years 1988-89 by adjusting the loss in share transaction. The assessing authority held that there was absolutely no compulsion on the part of the assessee to acquire the shares at a fancy price from the Unit Trust of India. The shares were not acquired with the view to hold them as investments or as stock-in-trade in the ordinary course of share dealings. The officer however pointed out that the assessee firm is one of the nominees through its newly appointed partner M/s. Capricon General Finance (P) Ltd., which was admitted as a partner by the assessee firm for supervising the smooth functioning of the purchase and sale of the shares. It was further pointed out that the said Capricon General Finance (P) Ltd. did not figure in any of the financial statements filed on behalf of the assessee firm, which clearly pointed out that the said company had withdrawn itself as a partner from the assessee firm subsequently after acting for the limited purpose. The officer however pointed out that during the period, Premier Mills Ltd. decided to pay a turnover incentive to the assessee firm, for which there was no agreement. The turnover incentive was paid to the assessee firm so that the assessee firm will be able to withstand the imperative losses involved in the purchase of the shares of M/s. Premier Mills Ltd. from Unit Trust of India. The officer pointed out that the incentive for the turnover was given to the assessee firm only to make good the loss resulting from the share transaction. The turnover incentive scheme was withdrawn after the share transactions were completed. Thus, on a totality of the facts seen, the officer held that the entire transactions could not be said to be the part of the business activity so as to make it a revenue loss or even a capital loss. In fact he observed that the assessee had purchased the loss and hence it, could not be allowed under any of the provisions of the IT Act, 1961. The officer who passed the order had considered every aspect of the transactions in detail and commented the manner in which he dealt with the whole issue.

3. Aggrieved by the assessment, the assessee went on appeal before the Tribunal. By a common order, the Tribunal once again confirmed the views of the CIT(A), who confirmed the order of assessment. Aggrieved by the order of the Tribunal, the assessee has filed the above appeals.

4. A perusal of the order of the Tribunal shows that Jagadish Chandran, the managing director of the Premier Mills Ltd. had an agreement in his individual capacity with the Unit Trust of India to repurchase the shares of Premier Mills Ltd., by using the name of the assessee firm. Jagadish Chandran purchased the shares at highest price than the market price.

Then the shares were subsequently sold to Belathur Investments (P) Ltd., a group concern of M/s. Premier Mills Ltd., wherein, Sabitha Chandran, who is the wife of Jagadish Chandran, managing director of Premier Mills Ltd., is the managing director. Going by the abovesaid facts, the Tribunal pointed out that it cannot be said that the assessee firm repurchased the shares as per the agreement. Secondly, the Tribunal pointed out that there was no agreement between the assessee firm and Unit Trust of India to repurchase the shares of Premier Mills Ltd. In order to escape from the provisions of s. 77 of the Companies Act, Premier Mills Ltd. utilised the services of assessee firm to purchase its own shares indirectly. Thus, when the market price of the shares was at Rs. 8.50 per share at the time of repurchase, no ordinary prudent businessman would agree to purchase the shares at higher price, triple the one quoted in the open market. Thus, the Tribunal found, as a matter of fact, the intention to repurchase the shares was evident to keep the control over Premier Mills Ltd. by the said company itself. As regards payment of compensation or commission, the Tribunal pointed out that the same was subsequently withdrawn after the transaction was over. Thus, the Tribunal confirmed the view of the authorities below that there was no pre-existing agreement between the assessee and the Unit Trust of India as regards the purchase of shares at highest price which stated to have been purchased. The Tribunal further held that there was no material to show as regards flow of funds from the assessee for the purchase of shares and that the transactions were genuine transactions. Based on these materials, the Tribunal rejected the appeal.

5. Even though learned counsel for the assessee strongly placed reliance on the agreement between the Unit Trust of India and Jagadish Chandran and canvassing the issue that, the transaction is genuine and straight transaction, we do not find any justifiable ground to accept the said contention. On going through the orders of the authorities below, we have no hesitation in confirming the finding rendered by the Tribunal which is based on records.

6. As already pointed out in the preceding para, the course of transaction that had gone in, clearly pointed out that the Premier Mills Ltd. merely used the assessee company as a special vehicle for the purpose of achieving what it would not be possible for it to achieve in a legal way. It was found that as Premier Mills Ltd. could not purchase its own shares and in order to circumvent s. 77 of the Companies Act, it decided to repurchase the shares through the assessee herein, which subsequently sold the same to the sister concern, wherein the spouse of managing director of Premier Mills Ltd. was a managing director of the sister concern. It is not denied by the assessee as to the absence of correspondence between the assessee and the Unit Trust of India as regards the price agreed upon at Rs. 30 per share, particularly, when the price of the share was quoted at Rs. 8.50 paise as on the date of the sale to the sister concern. There are no special reasons assigned for buying the shares at such a higher price when it had decided to sell the same within a short span of time at Rs. 8.50 paise.

7. In the absence of any material explained as regards the repurchase of shares at Rs. 30 per share and subsequently sold it at Rs. 8.50 paise, we do not agree with the assessee's contention that these are all genuine transactions.

8. Secondly, there is hardly any material to show that the funds for the purchase of these shares really went from the assessee company. Thus, as pointed out by the assessing authority in its order, as confirmed by the appellate authority, the entire transactions are lacking in genuineness for this Court to accept. We have no hesitation in confirming the order of the Tribunal, thereby, the appeals filed by the assessee stand dismissed. No costs.