

**(1978) 08 CAL CK 0004**

**Calcutta High Court**

**Case No:** Income-tax Reference No. 279 of 1973

Orient Trading Co. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision:** Aug. 25, 1978

**Acts Referred:**

- Income Tax Act, 1961 - Section 145, 256(1), 256(2)

**Citation:** (1981) 131 ITR 477

**Hon'ble Judges:** Sudhindra Mohan Guha, J; S.C. Deb, J

**Bench:** Division Bench

**Advocate:** R.K. Murarka, for the Appellant; B.L. Pal and Ajit Sengupta, for the Respondent

### **Judgement**

Deb, J.

The questions involved in this reference u/s 256(2) of the I.T. Act, 1961, are as follows :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the cost price of 55,100 shares should be taken at Rs. 5,51,000 and not at Rs. 1,45,000 ?

2. Whether the Tribunal was right in holding that on the facts and in the circumstances of the case, the exchange of one security for another could be described as realisation of the security resulting in profit ? "

2. The statement of the case relates to the assessment year 1963-64, for which the relevant previous year ended on July 31, 1962.

3. The assessee is a company. The assessee held 14,500 shares of Asiatic Oxygen & Acetylene Co. Ltd. of the face value of Rs. 10 each as its stock-in-trade. The assessee is a dealer in shares. The aforesaid shares were valued by the assessee at Rs. 1,45,000, i. e., at the cost price at the end of the assessment year 1962-63, and were included in the closing stock.

4. During the assessment year under reference a new company called Asiatic Oxygen Ltd. was floated. The new company made a public offer to obtain the shares of Asiatic Oxygen & Acetylene Co. Ltd. in exchange for the allotment of its own shares at the rate of 38 equity shares in the new company to 10 equity shares in the other company. The assessee also received such a circular letter from the new company. The assessee accepted the said offer and received 55,100 shares of the new company in exchange for the aforesaid holding of 14,500 shares in the other company. The face value of new shares was also at Rs. 10 per share. The assessee, however valued the new shares also at Rs. 1,45,000 being the cost price of the old shares.

5. The ITO did not accept the contention of the assessee that it had not earned any profit in the transaction. He found that the market quotation of the shares of Asiatic Oxygen Ltd. as on 11th August, 1962, i.e., only 11/2 days after the close of the relevant previous year of the assessee, was Rs. 10.12 per share. He accordingly valued the new shares at Rs. 10 per share and held that the sum of Rs. 5,51,000 was the value of the new shares. He, therefore, held that the assessee had earned a profit of Rs. 4,06,000 in this transaction (Rs. 5,51,000 minus Rs. 1,45,000) and brought that amount to tax as the assessee's income from share dealings.

6. The appeal filed by the assessee was dismissed by the AAC. The assessee filed a further appeal. It was argued on its behalf before the Tribunal that the assessee was a dealer in shares as correctly stated by the authorities below. It was submitted that the profit in business u/s 145 of the Act depended upon the method of accounting regularly employed by the assessee and such profits must be ascertained on commercial principles. It was further argued that the aforesaid transaction did not amount to a sale and, therefore, there could not be any profit in the transaction.

7. The departmental representative on the other hand argued that in order to earn profit it was not necessary that this transaction must result in a sale. It was also submitted that the transaction did involve profit which was taxable under the Act.

8. The Tribunal accepted the assessee's contention that the assessee was a dealer in shares and that the profits in a business u/s 145 of the Act depended upon the method of accounting regularly employed by the assessee and such profits must be ascertained on ordinary principles of commercial accounting and commercial trading. The Tribunal also accepted the argument of the assessee that the transaction did not amount to any sale. But it rejected the contention of the assessee that the transaction did not result in a profit and dismissed this part of the appeal.

9. Thereafter, the Tribunal rejected the application made by the assessee u/s 256(1) of the Act but a Division Bench of this court called for the aforesaid questions at the instance of the assessee.

10. It has not been found by the Tribunal that the cost price of 55,100 shares should be taken at Rs. 5,51,000 and not at Rs. 1,45,000 in its appellate order and, therefore, question No. 1 does not arise out of the order of the Tribunal and accordingly this reference is incompetent so far as this question is concerned and we, therefore, decline to answer it.

11. In view of the decision of the House of Lords in the case of Westminster Bank Ltd. v. Osier (Inspector of Taxes) [1933] 1 ITR 65 and a decision of this court in the case of UNITED BANK OF INDIA LTD. (FOR COMILLA BANKING CORPORATION LTD.) Vs. COMMISSIONER OF Income Tax, CALCUTTA., we answer question No. 2 in the affirmative and against the assessee.

12. There will be no order as to costs.

Sudhindra Mohan Guha , J.

13. I agree.