

(2012) 08 CAL CK 0123

Calcutta High Court

Case No: IT Appeal No. 259 of 2003

JCT Ltd.

APPELLANT

Vs

Commissioner of Income Tax,
West Bengal

RESPONDENT

Date of Decision: Aug. 30, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 154

Citation: (2012) 211 TAXMAN 1

Hon'ble Judges: K.J. Sengupta, J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: J.P. Khaitan and Sourav Bagaria, for the Appellant; Smita Das De, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Joymalya Bagchi, J.

This appeal was admitted on the following substantial question of law in respect of assessment year 1993-93 :

Whether the Tribunal was justified in law in holding that the loss of Rs. 65/- incurred by the appellant on the sale of each non-convertible Part B of the 15% redeemable partly convertible debentures issued by Ballarpur Industries Ltd. aggregating to Rs. 28,17,945/- was not allowable as a short term capital loss but was required to be treated as part of the cost of acquisition of the convertible Part A of the debentures and its purported findings in this behalf are arbitrary, unreasonable and perverse ?

The appellant assessee filed its return of income for the assessment year 1993-94 on 21.12.1993. Thereafter, it filed a revised return on 23.12.1994. The revised return was rectified u/s 154 of the income tax Act, 1961. In the said revised return the

assessee in computation of capital gain claimed a short term capital loss of Rs. 28,57,947/- as shown below:

2. After completing the assessment u/s 143(3) of the income tax Act, the Assessing Officer disallowed the aforesaid short term capital loss of Rs. 28,17,945/-.

3. In appeal, CIT (Appeals) by order dated 19.04.1996 set aside the disallowance made by the Assessing Officer, inter alia, relying on the decision of the learned Tribunal, Calcutta in ITA No. 2649 (Cal) of 1996 wherein in respect of the self-same rights issue the learned Tribunal had arrived at the conclusion that the disallowance as claimed by the assessee as short term capital loss was permissible.

4. This order of CIT (Appeals) was challenged by the revenue before the learned Tribunal in I.T.A. No. 117 (Cal) 1998 wherein the learned Tribunal allowed the appeal of the revenue, inter alia, holding that the judgment and order of the learned Tribunal in the case of Kamal Trading Co. v. Dy. CIT[ITA No. 977 (Cal) of 1998] applied to the facts of the instant case and affirmed the disallowance made by the Assessing Officer. Hence, the appellant assessee has filed the instant appeal.

5. Mr. Khaitan, learned counsel appearing for the appellant assessee states that the appellant assessee applied in the rights issue of 15% secured redeemable partly convertible debentures (PCD in short) of Rs. 400/- each of M/s. Ballarpur Industries Ltd. (BILT in short) in which the appellant assessee had held shares. Each PCD consisted of two parts. Part A was the convertible portion having face value of Rs. 100/-. The convertible portion at the end of six months from the date of allotment was to stand converted into one equity share of BILT. Part B was the non-convertible portion having face value of Rs. 300/-. The aggregate sum of Rs. 400/- for the two parts was payable as follows :

6. It was also submitted that the pricing of the PCD and their two parts was approved by the Controller of Capital Issue. The letter of offer of the said rights issue itself provided for arrangement of sale of non-convertible portion (Part B) debentures, whereby BILT had made arrangements with Citi Bank to purchase Part B portion of the PCD having face value of Rs. 300/- at Rs. 235 per debenture from willing allottees thereby requiring the said allottees not to make any further payment on allotment and to surrender Part B portion of their PCDs in favour of Citi Bank along with a signed blank transfer deed in favour of the Citi Bank at the time of allotment by BILT. Citi Bank on its turn instead of making the payment of the consideration sum of Rs. 235/- to the applicant i.e. the appellant assessee in the instant case paid the same to BILT on behalf of the appellant assessee in fulfilment of their letters of obligation in respect of the allotment. In such manner, the appellant assessee retained the convertible Part A of the PCD valued at Rs. 100/- each. In terms of its agreement with the Citi Bank, non-convertible Part B of the PCD having face value of Rs. 300/- each was sold to a bank at a price of Rs. 225/- each resulting in loss of Rs. 65 per non-convertible Part B aggregate to Rs. 28,17,945/-.

7. It is contention of the appellant assessee that convertible Part A of the PCD was severable from the non-convertible Part B which was transferred at a loss by the assessee to Citi Bank and therefore the loss suffered could not be construed to be a part of the cost of acquisition of convertible Part A of the PCD retained by the appellant assessee.

8. In support of his contention Mr. Khaitan relied on a decision of the learned Tribunal in respect of the self-same rights issue in the case of Karam Chand Thapar Bros. Ltd v. Dy. CIT[ITA No. 2699 (Cal) of 1996 dated 12.06.1997, which was confirmed by an Hon"ble Division Bench of this Court by order dated 17.12.1998 in ITA No. 130 of 1998. He further submitted that the said judgment and order of this Court in I.T.A. No. 130 of 1998 has not been appealed against and has become final and binding upon the Department.

9. He also referred to other decisions of the Tribunal in the case of Man Mohan Thapar v. Dy. CIT[ITA No. 1670 (Cal) of 1997 and in the case of Bharat Starch & Chemical Ltd. [I.T.A. No. 294 (Cal) of 1997] new named Karam Chand Thapar & Bros. Ltd. (supra) wherein similar short term capital loss was allowed in favour of the assessee in respect of the self-same rights issue and had not been appealed against by the department.

10. He further submitted that the Tribunal erred in law in relying upon the decision of the learned Tribunal in the case of Kamal Trading Co. (supra) wherein the disallowance for short term capital loss had arisen out of a different rights issue wherein the terms and conditions were entirely different from the present one.

11. Mr. Khaitan submitted that in Kamal Trading Co."s case (supra) the value of NCD along with detachable warrant were not priced separately and the purchase constituted a single transaction. Furthermore, the warrants were attached to the NCD itself. These facts clearly rendered the transaction different from the one undertaken by the assessee in the instant case.

12. Smt. Smita Das De appearing for the department submitted that the loss suffered by the company which was claimed as short term capital loss was in fact a part of the cost of acquisition of the convertible Part A portion of NCD and that the Part A and Part B of the debenture allotted by BILT were not severable as claimed by the assessee and constituted a single transaction.

13. She further submitted that the loss was incurred by the assess at a time when the Part A portion had not been converted into share and therefore loss has to be constituted as a cost of acquisition of PCD of BILT by the appellant assessee.

14. We have considered the submissions of the parties. We are of the opinion that this issue in fact fell for decision before this Court in the case of CIT v. Karam Chand Thapar & Bros. (Coal Sales) Ltd. [ITA No. 130 of 1998, dated 17-12-1998] wherein this Court by its judgment and order dated 17th December, 1998 has upheld the

decision of the learned Tribunal that the claim of loss of the assessee in the matter of sale of Part B of the PCD in the self-same rights issue was permissible as short term capital loss. While approving the decision of the learned Tribunal the Bench held as follows :

However, the financial amount being heavy involving a little more than Rs. 6 crore, we had a look at the Tribunal's order, specially paragraphs 8 and 9. Although we reject the application on the above ground, it should also be understood as approving the way the Tribunal has dealt with the matter in paragraph 8 and the beginning of paragraph 9. In short the disposing of the Part B non-convertible debenture resulting in capital loss cannot take on a different aspect because and only because the convertible portion being Part A was held on to by the assessee. A separate treatment given by the assessee to its two separate types of property is not illegal and, therefore, it cannot affect the assessee's interest in any adverse manner whether for tax purposes or otherwise.

We are also in agreement with the Tribunal that the introduction of Citi Bank by the assessee in the matter of disposal of the Khokha's (a commercial word used by the business community as referring to non-convertible debentures) in no manner changed the colour of the transaction in our opinion the Tribunal has correctly proceeded on the basis that the introduction of the Bank was a financial arrangement made by the assessee. That arrangement is not illegal in any manner. That arrangement cannot enhance the tax liability of the assessee in any manner and no part of the act can be shown whereby the assessee could be held to be so adversely affected.

15. It appears that the aforesaid judgment has not been challenged by the department and the same has been accepted.

16. In view of the said ratio of the Hon"ble Division Bench upholding the fact that the loss suffered by the assessee in the sale of the convertible Part B portion of NCD to Citi Bank is to be treated as a short term capital loss we find no reason why the appellant in similar situation is to be treated differently.

17. It is apposite to state that in respect of the other cases, namely, I.T.A. No. 294 (Cal) of 1997 and I.T.A. No. 1679 (Cal) of 197, the learned Tribunal has accepted such loss as short term capital loss and permitted such deduction in respect of the self-same rights issue to the respective assesseees.

18. The department has not appealed against such orders of the learned Tribunal and has accepted the same.

19. In spite of such state of affairs we are at a loss as to how the learned Tribunal in the impugned decision could come to completely different finding that the said decision in the case of Karam Chand Thapar & Bros. (Coal Sales) Ltd. (supra) is not applicable to the facts of the assessee's case, and that of Kamal Trading Co. (supra)

is applicable. It is an admitted fact that the decision of the Tribunal in Karam Chand Thapar & Bros. (Coal Sales) Ltd. (supra) is in respect of selfsame rights issue whereas the decision in Kamal Trading Co. (supra) was delivered in respect of a different rights issue wherein the terms and conditions were completely different from that in the present rights issue. In fact, the Tribunal in its decision in Kamal Trading Co.'s case (supra) distinguished the terms of the rights issue in that case from the rights issue in Karam Chand Thapar & Bros. (Coal Sales) Ltd. (supra) which is same in the instant case.

20. In spite of that the Tribunal chose to rely on the ratio of Kamal Trading's case (supra) instead of relying on the decision of the Karam Chand Thapar & Bros. case (supra) which related to the self-same rights issue. Furthermore, the decision of the Tribunal runs contrary to the ratio laid down by this Court in the case of Karam Chand Thapar & Bros." case (supra) in its judgment and order dated 17th December, 1998.

21. In view of the above decision, we, therefore, hold that the finding of the learned Tribunal is not sustainable as being contrary to the law declared by this Hon"ble Court as aforesaid.

22. We set aside the impugned order passed by the learned Tribunal to the extent it confirmed the disallowance of Rs. 28,17,945/- as short term capital loss as claimed by the assessee and allowed by CIT (Appeals). The reference is accordingly answered in favour of the appellant assessee and against the assessee.

K.J. Sengupta, J.

I agree