(1990) 09 BOM CK 0090

Bombay High Court

Case No: Income-tax Application No. 76 of 1989

Devidayal Rolling Mills		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Sept. 20, 1990

Acts Referred:

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

Citation: (1991) 191 ITR 154 : (1991) 54 TAXMAN 261

Hon'ble Judges: T.D. Sugla, J; Sujata V. Manohar, J

Bench: Division Bench

Advocate: S.E. Dastur, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla J.

1. This is an application by the assessee u/s 256(2) of the Income Tax Act, 1961. The assessee has sought to raise the following questions as questions of law :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal erred in disallowing the appellant"s claim of Rs. 5,77,500 being the short-term capital loss incurred by it on the sale of its shares in Vidyut Research Co. P. Ltd. ?

(ii) Whether the Tribunal"s view that :

(a) the applicant was not entitled to claim short-term capital loss of Rs. 5,77,500 on the sale of its shares in Vidyut Research Co. P. Ltd.

(b) a colour of a share transaction had been given to the loan transaction with a view to claim set off of the resultant loss against the regular income.

(c) the applicant was aware, at the time when its loan to Vidyut Research Co. P. Ltd., was converted into preference shares, that only 25% of such loan was recoverable, are vitiated by their being based on conjectures, suspicion and surmises and by their being contrary to the material on record and perverse ?

(iii) Whether the Tribunal erred in ignoring the conversion of the applicant''s loan to Vidyut Research Co. P. Ltd., into shares and in ignoring the subsequent sales by the applicant of such shares ?

(iv) Whether the Tribunal erred in holding that the cost of the shares obtained by the applicant in Vidyut Research Co. P. Ltd., was the value of the applicant''s right to the loan advanced by it to Vidyut Research Co. P. Ltd., overlooking and failing to appreciate the fact that such shares were obtained by the applicant on conversion of the amount of such loans into such shares ?

(v) Whether the Tribunal failed to appreciate that the cost to the applicant of the preference shares in Vidyut Research Co. P. Ltd., was Rs. 7,50,000 being the amount of the applicant''s loan to Vidyut Research Co. P. Ltd., which was applied towards the acquisition of such shares and being the amount which Vidyut Research Co. P. Ltd., was discharged from paying to the applicant consequent upon such conversion ?

(vi) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the cost to the applicant of the preference shares obtained by it in Vidyut Research Co. P. Ltd., on conversion of the outstanding amount of the loan advanced by it to Vidyut Research Co. P. Ltd., was equal to the consideration received by the applicant on the subsequent sale by it of such shares ?

(vii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the loss, if any, was on account of realisation of the loan at the time of its conversion into shares and was, therefore, not allowable in computing the income of the applicant ?''

2. The proceedings relate to the assessment year 1978-79. The Tribunal had rejected the reference application observing that the question pertained to a finding of fact on the basis of cogent material.

3. After hearing Shri Dastur, learned counsel for the assessee, and Shri Jetley, learned counsel for the Department, at some length, we are of the view that a question of law does arise out of the order of the Tribunal.

4. The Tribunal is, accordingly, directed to refer the following question as a question of law :

''Whether, on the facts and in the circumstances of the case, the Tribunal erred in disallowing the appellant''s claim of Rs. 5,77,500 being the short-term capital loss

incurred by it on the sale of its shares in Vidyut Research Co. P. Ltd. ?"

5. This question, in our view, covers all relevant aspects. The Tribunal is directed to draw up the statement of the case an refer the above question of law to this court within six months from today.

6. Rule is made absolute as above. No order as to costs.