

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.01.2010

+ **ITA 726/2009**

THE COMMISSIONER OF INCOME TAX - III ... Appellant

- versus -

SMC CREDIT LIMITED ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rashmi Chopra

For the Respondent : Mr O.S. Bajpai, Sr Advocate with Mr V.N. Jha and
Mr Bibhuti Kumar Singh

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. In this appeal filed by the revenue against the order dated 17.10.2008 passed by the Income-tax Appellate Tribunal in ITA No.1133/Del/06 pertaining to the assessment year 1998-99, the issue relates to the loss of Rs 18,06,620/- claimed by the respondent / assessee as a trading loss on account of transactions in shares. The Assessing Officer as well as the Commissioner of Income-tax (Appeals) held that the shares in respect of which the loss is claimed were in the nature of investment and, therefore, the loss incurred in respect thereof would be capital loss and not a business / trading loss.

2. The Income-tax Appellate Tribunal, however, found as a fact that the shares in question were held as stock-in-trade. The learned counsel for the revenue drew our attention to an order dated 12.10.2004, whereby the Appellate Tribunal, in respect of this very assessment year, had, in the first round, set aside the order dated 09.04.2001 passed by the Commissioner of Income-tax (Appeals), who had deleted the loss of Rs 18,06,620/- incurred on the sale of the said shares and directed that the same be treated as a business loss instead of a capital loss as treated by the then Assessing Officer. The Tribunal, in the first round, by virtue of its order dated 12.10.2004, set aside the decision of the Commissioner of Income-tax (Appeals) and remanded the matter to the Assessing Officer with a direction to pass a reasoned order with specific reference to the material on record and to come to a conclusion afresh after giving a reasonable opportunity of being heard to the assessee.

3. It is thereafter that the Assessing Officer re-examined the matter and came to the conclusion that the shares were held as investment and the same were shown to be investments in Schedule-4 of the balance sheet. Similarly, it was also pointed out in the assessment order that the shares, which were held as stock-in-trade for the purposes of earning business income, had been separately reflected by the assessee in Schedule-5 of the balance sheet. Thus, going by the presentation of the accounts and the balance sheet given by the assessee itself, the Assessing Officer held that the shares in question were held by the assessee not as stock-in-trade, but as an investment and consequently, the loss incurred in respect thereof would

be a capital loss and not a business or trading loss. The same view was taken by the Commissioner of Income-tax (Appeals) in his order dated 14.02.2006.

4. Being aggrieved by the fresh assessment and the order passed in appeal by the Commissioner of Income-tax (Appeals), the respondent / assessee preferred the said appeal (ITA 1133/Del/06) before the Income-tax Appellate Tribunal pertaining to the assessment year 1998-99, which was allowed by the Tribunal by the order dated 17.10.2008, which is impugned before us. From the impugned order, it is apparent that on behalf of the assessee, it was argued that the presentation of accounts in the balance sheet for the assessment years 1996-97 and 1997-98 were identical to the presentation of accounts in the balance sheet in the current year, i.e., assessment year 1998-99. More particularly, it was pointed out that in the earlier years also, though some of the shares were shown as investment, they, in fact, represented stock-in-trade. It had been contended before the Tribunal, on behalf of the assessee, that the frequency of transactions indicated that the assessee was dealing with the shares on the trading account and that the nomenclature of the entries in the books of accounts was not conclusive with regard to the actual nature of transactions. On the other hand, strong reliance was placed on the orders of the Assessing Officer and that of the Commissioner of Income-tax (Appeals) by the departmental representative.

5. The Tribunal, after examining the records of the case and on a comparative analysis of the presentation of the accounts of transactions

done in the earlier years as well as the year in question, came to the conclusion that there had been no change in the fact situation with regard to the presentation of accounts. It was also found as a fact that the assessee had significant frequency in dealing with the shares and that the same really constituted stock-in-trade though they were shown as investment in the books of accounts. It was specifically noted that in the year in question, there were more than one hundred transactions in shares in which the loss had been incurred. The Tribunal found as a fact that the loss was a result of a systematic activity in relation to shares and, therefore, it came to the conclusion that the loss claimed by the assessee should have been accepted as a business loss. Consequently, the Tribunal accepted the assessee's contention having regard to the facts and circumstances of the case as prevailing in the current year as well as that in the earlier years.

6. In view of the foregoing, we are of the opinion that the findings sought to be challenged before us are in the nature of factual findings and no question of law, what to speak of a substantial question of law, arises for our consideration. Although it was sought to be argued that a question on perversity could be framed, on going through the impugned order as well as the orders of the lower authorities, we do not find any substance in such a plea. A finding of fact has been returned with regard to the nature of the loss in respect of the year in question after the Tribunal examined the material on record. Consequently, no interference is called for. It is obvious that such factual matters require examination in the context of the

assessment year in question and the findings so recorded are relevant for that year. The fact situation may be different in future assessment years.

7. Anyhow, no substantial question of law arises for our consideration in this appeal. The same is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

January 07, 2010

dutt