



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR JUSTICE C.M. POONACHA

INCOME TAX APPEAL NO. 298 OF 2017

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX-4
BMTC COMPLEX,
KORAMANGALA, BANGALORE.
2. ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE-11(5),
BANGALORE.

...APPELLANTS

(BY SRI.E.I.SANMATHI., ADVOCATE)

AND:

1. M/S JUPITER ENTERTAINMENT
VENTURES (P)LTD.
NO.54, RICHMOND ROAD,
BANGALORE-560025.
PAN - AABCJ 7071Q,

...RESPONDENT

(BY SRI.NARENDRAKUMAR J. JAIN., ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 03.11.2016, VIDE ANNEXURE-A, PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE, AS SOUGHT





FOR, IN THE RESPONDENT-ASSESSEE'S CASE, IN APPEAL PROCEEDINGS IN ITA NO.792/BANG/2013 FOR A.Y 2009-2010 & GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE S.G.PANDIT)

The Revenue is in appeal under Section 260-A of the Income Tax Act, 1961 (for short, 'the Act') questioning the correctness and legality of order dated 03.11.2016 passed by the Income Tax Appellate Tribunal, 'B' Bench, Bengaluru (for short, 'Appellate Authority') in ITA.No.792/Bang/2013 for the assessment year 2009-10.

2. Heard the learned counsel Sri.E.I.Sanmathi for appellants/Revenue and learned counsel Sri.Narendrakumar J. Jain for respondent/assessee. Perused the appeal papers.



3. Learned counsel appearing for both the parties would submit that though the Revenue had filed the above appeal raising five substantial questions of law, only substantial question of law No.1 raised herein would survive for consideration, since other substantial questions of law are decided in ITA.No.297/2017 dated 13.03.2023 between the same parties.

4. The substantial question of law which remain for consideration is as follows:

"1. Whether on the facts and in the circumstances of the case, the Tribunal is right in setting aside the disallowance of short term loss of Rs.11,27,2000 claimed by assessee in P & L A/c by holding that the shares have acquired by assessee under normal business transaction and can be taken as stock-in-trade even when assessing authority has proved that the assessee has adopted colorable device to reduce the ax liability by booking business of 11.27 crore and assessee had intentionally shown shares of M/s. Asianet Communication as an inventory in its books to claim loss as



business loss, the assessee had failed to give any reason for conversion of loan to the exorbitant pricing of these shares at a premium of Rs.490/- per share?"

5. Brief facts leading to filing of the present appeal are that, assessment order under Section 143(3) of the Act was passed in respect of respondent/assessee for the assessment year 2009-10. The Assessing Authority disallowed a sum of Rs.11,27,00,000/-, which the assessee claimed it as business loss. The Assessing Authority had also disallowed certain other claims of the assessee. The assessee preferred appeal before the Commissioner of Income Tax (Appeals) and the appeal was partly allowed. The Commissioner of Income Tax (Appeals) while partly allowing the appeal, rejected assessee's contention and held that a sum of Rs.11,27,00,000/- disallowed by the Assessing Authority was not a business loss for claiming deduction and allowed the appeal in respect of other disallowances. Aggrieved by the order of Commissioner of Income Tax (Appeals),



assessee as well as Revenue preferred the appeals before the Appellate Tribunal. It is pertinent to note here itself that the assessee preferred appeal among others against disallowance of Rs.11,27,00,000/- contending that it is business loss and the Revenue preferred appeal in respect of allowing other disallowance made by the Assessing Authority. The Appellate Tribunal allowed the appeal of the assessee holding that loss in question is a business loss and not a capital loss and dismissed the appeal of Revenue.

6. Learned counsel appearing for the appellant Sri.Sanmathi.E.I., submits that as held by the Tribunal, a sum of Rs.11,27,00,000/- shown as loss is not a business loss and it is not a genuine transaction and the same is colorable one, which the Tribunal failed to appreciate. Learned counsel would submit that on 26.10.2006, M/s.Asianet TV Holdings (P) Ltd., paid Rs.6 Crores to M/s.Fedex Securities Ltd. Further, on 03.11.2006, it paid a sum of Rs.6.5 Crores to M/s.Fedex Securities Ltd.



Thereafter, on 03.09.2007, M/s.Asianet TV Holdings (P) Ltd., requested M/s.Fedex Securities Ltd., to treat the amounts paid to it as share application money and to allot the shares to assessee company. Accordingly, M/s.Fedex Securities Ltd., allotted 2.30 Lakh shares of face value of Rs.10/- each at a premium of Rs.490/- per share. Thereafter, the assessee on 16.09.2008 sold the shares at Rs.10/- per share to M/s.Trinity Fintec Pvt. Ltd., which is a group company of the assessee. Therefore, learned counsel for the Revenue submits that it is a colorable claim to show the loss and hence, it cannot be allowed as business loss. The Tribunal failed to give finding as to whether it is colorable one or genuine transaction to mean that whether the loss is genuine loss or not. Thus, learned counsel would pray for allowing the appeal by holding that the transaction of buying and selling shares in the facts and circumstances is colorable device and it is not a genuine loss.



7. Per contra, learned counsel Sri.Narendrakumar J. Jain for respondent/assessee would submit that the Revenue has not made out any ground or placed on record any material to establish that it is a colorable device and to establish that it is not a genuine loss. Further, learned counsel would submit that the Revenue has not preferred any appeal against the finding of the Tribunal and in not considering the contention of colorable device or not a genuine loss before the Tribunal. Thus, learned counsel would pray for dismissal of the appeal.

8. Having heard the learned counsel appearing for the parties and on perusal of the entire appeal papers, the only point which falls for our consideration is as to,

"Whether the impugned order of the Tribunal requires interference at the hands of this Court?"

9. It is settled position of law that under Section 260-A of the Act, the High Court could entertain the appeal or appeals only if it involves substantial question/s



of law. In the instant case, we are of the view that in the peculiar facts of the case, the question raised by the Revenue is not a substantial question of law and it is a question of fact. Moreover, the Revenue had not filed appeal before the Tribunal with regard to colorable device or the genuineness of transaction or on allowance of loss in a sum of Rs.11,27,00,000/-. But, the Revenue's appeal was in respect of other disallowances allowed by the Assessing Authority.

10. The Tribunal at paragraphs 7 and 8 of its order has rightly held as follows:

"7. From the above Para of the order of Id. CIT (A), we find that this is the only objection of the Id. CIT (A) that the loss in question is a capital loss and not business loss In order to determine as to whether the loss in question is capital loss or business loss, one has to find out the intention at the time of acquisition of shares. The shares were acquired by way of application and as per the Board Resolution, these shares were acquired as slock-in-trade. This is not in dispute that shares are in fact acquired by the assessee at Rs. 500 per share in



the FY 2007-08 and were shown by the assessee in its balance sheet as on 31.3.2008 as inventory and thereafter in the present year, these shares are sold by the assessee at a lower price resulting into loss in question and there is no valid reason or basis indicated in the order of CIT (A) to say that it is capital loss particularly when the loss itself is being accepted by the CIT(A) and the Revenue is not in appeal against this decision of CIT(A) that the loss in question is a fact.

8. The only objection of the Id. CIT(A) is that it is not a business loss but capital loss and the reasoning of the CIT(A) is this that the assessee has not acquired the shares under normal business transaction so that the same can be taken as stock-in-trade We find no merit in this objection of CIT(A) in view of this fact that shares were acquired by the assessee as per Board Resolution dated 3.9.2007, as per which, the shares in these two companies are to be acquired as stock-in-trade. Hence, on this issue, we reverse the order of the CIT(Appeals) and hold that loss in question is a business loss and not a capital loss."

11. The substantial question of law raised by the Revenue would not emanate from the order of the Tribunal, but from the order of the Commissioner of



Income Tax (Appeals). The Revenue had not raised the genuineness of transaction or colorable device before the Tribunal. Hence, in the peculiar facts and circumstances of the case, we are not inclined to interfere with the order of the Tribunal. Accordingly, the substantial question of law raised by the Revenue is answered against them and in favour of the assessee.

12. Accordingly, appeal stands dismissed.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

NC
List No.: 1 Sl No.: 91