

PETITIONER:
NIRMAL TRADING COMPANY

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, CENTRAL (CALCUTTA) October 10, 19

DATE OF JUDGMENT 10/10/1979

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
UNTWALIA, N.L.

CITATION:
1980 AIR 234 1980 SCR (1) 900
1980 SCC (1) 119

ACT:

Indian Income Tax Act 1922 S. 24(1) Explanation 2-
Transactions of purchase and sale between the same parties
by mere transfer of delivery orders without physical
delivery of goods-Transactions if speculative.

HEADNOTE:

The assessee carried on business in purchase and sale of gunnies. By four different contracts it purchased gunny bags from one party and sold them to the same party by four different contracts, all of which resulted in a loss of Rs. 2.75 lakhs. The contracts were transferable specific delivery contracts falling within the scope of the bye-laws of the East India Jute & Hessain Exchange Limited which were approved by the Forward Market Commission. In these transactions there was no physical delivery of goods and there was a transfer of delivery orders only.

Before the Income Tax officer, the assessee claimed the loss as an ordinary business loss on the ground that the transactions were entered into in the ordinary course of business.

The Income Tax officer rejected the claim and held that the transactions in which delivery were handed over without physical delivery of the goods were "speculative transactions" within the meaning of Explanation 2 to S. 24(1) of the Indian Income Tax Act.

The Appellate Assistant Commissioner held in favour of the assessee and his order was upheld by the Income Tax Appellate Tribunal. The High Court however answered the reference by the Tribunal in favour of the Revenue and against the assessee.

Dismissing the appeal this Court,

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HELD: 1. The High Court was right in answering the question in favour of the Revenue. [905 G]

2. Explanation 2 to S. 24(1) defines a speculative transaction as "a transaction in which a contract for purchase and sale of any commodity including stock and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.." What is contemplated by the explanation is a real or factual delivery or transfer of the commodity and not a

notional delivery or transfer. [905 A]

3. Over-ruling its earlier view in Raghunath Prasad Poddar v. Commissioner of Income Tax, Calcutta, (1973) 90 I.T.R. 140, this Court in Davenport & Co. (P) Ltd. v. Commissioner of Income Tax, West Bengal 11, (1975) 100 I.T.R. 715, upheld the view of the Calcutta High Court that 'unless the transaction was settled by delivery or transfer of the commodity it would be a speculative transaction by reason of Explanation 2 to 5. 24(1)'. [905 B-E]

903

In the instant case, the seller and the buyer of the gunny bags was the same. There was no actual delivery or transfer of the gunny bags, but the contracts were settled between the parties by transfer of pucca delivery orders only.

[905]

Wadhwa (D. N.) v. Commissioner of Income Tax W.B. (1966) 61 I.T.R. 154 Budge Budge Investment Co. Ltd. v. Commissioner of Income Tax West Bengal I Calcutta (1969) 73 I.T.R. 772 Nanalal M. Barma & Co. (p) Ltd. v. Commissioner of Income Tax West Bengal-II (1969) 73 I.T.R. 713 and Murlidhar Jhunjhunwala v. Commissioner of Income Tax West Bengal-11 (1969) 73 I.T.R. 727; approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2259 of 1972.

From the Judgment and Order dated 6-1-1971 of the Calcutta High Court in I.T.R. No. 86/671. C

P. V. Kapoor Anil Sachthey Miss Bina Gupta and Praveen Kumar for the Appellant.

P. A. Francis and Miss Subashini for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J.-This appeal by certificate under s. 66A(2) of the Indian Income Tax Act, 1922 raises the question whether the transactions in which the assessee was engaged were "speculative transactions" as defined by Explanation 2 to section 24(1) of that Act.

The assessee carries on business in gunnies. The total purchased disclosed by the assessee for the year ended June 30, 1960 amounted to Rs. 1,01,51,225 and the total sales during that year were shown at Rs. 1,03,27,208. The purchases and sales included certain transactions with Messrs Kesardeo Shyamsunder. Under contract Nos. 96 dated November 11, 1959, 108 dated November 12, 1959 43 dated April 27, 1960 and 836 dated May 25, 1960, the assessee claimed that 5,700 bales of gunny bags were purchased for Rs. 22,05,000/-. The assessee says that he sold them to the same party under contract Nos. 520 dated March 30, 1960 540 and 541 dated April 1, 1960 and 610 dated April 19, 1960 for Rs. 19,79,550. The result was a loss of Rs. 2,25,450. The contracts were transferable specific delivery contracts falling within the scope of the bye-laws of the East India Jute and Hessian Exchange Limited, the bye-laws having been passed with the concurrence of the Forward Market Commission. Admittedly in the aforementioned transactions of purchase and sale there was no physical delivery of goods. There was a transfer of delivery orders only.

In the income tax assessment for the assessment year 1961-62, the relevant previous year being the year ended June 30, 1960, the

904

assessee showed the loss of Rs. 2,25,450/- as an ordinary

business loss. The Income Tax Officer rejected the claim and held that the transactions in which delivery orders were handed over without physical delivery of the goods were "speculative transactions" with the meaning of Explanation 2 to s. 24(1) of the Indian Income Tax Act. He observed that the loss of Rs. 2,25,450/-, being a loss in speculation business, would be treated separately. The assessee appealed, and the Appellate Assistant Commissioner took the view that as "pucca" delivery orders had been transferred, there was a transfer of documents of title to the goods and, therefore, actual delivery of the goods must be deemed to have been given. On appeal by the Revenue, the Income Tax Appellate Tribunal found that the only transaction which had suffered a loss was the transaction under contract No. 520 which was closed by the reverse purchase contract No. 836. The loss suffered was Rs. 2,99,700/- but the claim made by the assessee quantified the loss at Rs. 2,25,450/-. In respect of that transaction the Appellate Tribunal observed that on purchase when the assessee was deemed to have received delivery the full amount was paid by cheque, and similarly when the assessee "sold forward" the full sum was also paid through cheque. It referred to the trade usage that cheques were paid when bills were received and on payment there of the pucca delivery orders changed hands. Therefore, said the Tribunal, in form it was a transaction of delivery for cash, and was not a speculative transaction.

At the instance of the Revenue, the Appellate Tribunal referred the following question to the High Court at Calcutta:-

"Whether, on the facts and in the circumstances of the case, the loss of Rs. 2,25,450/- was a loss in speculation transaction within the meaning of Explanation 2 to s. 24(1) of the Indian Income Tax Act, 1922 ?"

The reference was answered by the High Court in favour of the Revenue.

In this appeal, it is contended on behalf of the assessee that the High Court erred in holding that in order to take a transaction out of the definition of "speculative transaction" in Explanation 2 to s. 24(1) of the Indian Income Tax Act, 1922, there must be actual delivery of the commodity itself and that delivery of pucca delivery orders without anything more did not constitute "actual delivery" within the meaning of that provision. It is urged that the giving and taking of pucca delivery orders amounts to actual delivery of goods. Pucca delivery orders, it is stated, are documents of title to goods. In our opinion, the contention cannot be accepted. Explanation 2 to s.

905

24(1) defines a speculative transaction as "a transaction in which a contract for purchase and sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips..". It is apparent that what is contemplated is a real or factual delivery or transfer, and not a notional delivery or transfer.

The Calcutta High Court, in a series of decisions including *Wadhwa (D.M.) v. Commissioner of Income Tax W. B. Budge Budge Investment Co. Ltd. v. Commissioner of Income Tax, W. Bengal 1*, Calcutta, *Nanalal M. Varma & Co. (P) Ltd. v. Commissioner of Income-tax West Bengal* and *Murlidhar Jhunjhunwala v. Commissioner of Income Tax West Bengal 11* held that unless the transaction was settled by actual delivery or transfer of the commodity it would be a speculative transaction by reason of Explanation 2 to s.

24(1). Subsequently, in Raghunath Prasad Poddar v. Commissioner of Income Tax Calcutta the Supreme Court took a more liberal view and laid down that if the original transaction of sale and purchase of goods was followed by one or more subsequent contracts in respect of the same goods the original transaction would not be a speculative transaction if actual delivery of the goods sold was effected to the ultimate purchaser of the pucca delivery orders. The restricted view taken by the Calcutta High Court in Nanalal M. Varma & Co. (P) Ltd. (supra) was disproved. But recently a larger bench of this Court in Davenport & Co. P. Ltd. v. Commissioner of Income Tax West Bengal II has overruled Raghunath Prasad Poddar (supra) and preferred the strict view adopted by the Calcutta High Court. The case before us, however, is a simple one. The transactions took place between the assessee and Messrs Kesardeo Shyamsunder alone. It is not disputed that there was no actual delivery or transfer of the gunny bags. The contracts were settled between the parties by transfer of pucca delivery orders.

Accordingly, we hold that the High Court was right in answering the question in favour of the Revenue and against the assessee.

The appeal is dismissed with costs.

N.V.K.

Appeal dismissed.

906