THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.11.2015

+ **ITA 305/2002**

COMMISSIONER OF INCOME TAX DELHI-I ..... Appellant

versus

M/S STAINLESS INVESTMENT LTD. ..... Respondent

<u>Advocates who appeared in this case:</u>

For the Appellant : Mr Kamal Sawhney, Senior Standing Counsel with Mr Raghvendra Singh and Mr Shikhar Garg.

For the Respondent : Mr. Ajay Vohra, Senior Advocate with Ms. Kavita Jha.

CORAM:
DR. JUSTICE S. MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

<u>JUDGMENT</u>

<u>VIBHU BAKHRU, J</u>

1. The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning an order dated 14th March, 2002 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in ITA No. 5306/Del/95. The said appeal (being ITA No. 5306/Del/95) was filed by the Revenue against an order dated 15th March, 1995 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)'] in Appeal No.284/93-94 whereby the CIT(A) allowed the Assessee's appeal directed against the assessment order dated 28th July, 1993 passed by the Assessing

Officer in respect of Assessment Year (AY) 1990-91.

2. The Appeal was admitted on 12th October, 2004 and the following questions of law were framed:-

> "1. Whether the Income Tax Appellate Tribunal was right in holding that the sale consideration received by the assessee by transfer of shares and sale of rights entitlement of Partly Convertible Debentures (PCDs) is income from capital gains and not income from business?
>
> 2. Whether the Income Tax Appellate Tribunal was right in holding that the assessee had incurred loss on sale of its entitlement to acquire partly convertible debentures and the assessee is entitled to set off the alleged loss from the capital gains/income earned by the assessee?"

3. However in the facts of the present case, the first question does not arise. Further the reference to partly convertible debentures in the second question may be read as fully convertible debentures.

4. Briefly stated the relevant facts necessary to address the aforesaid question are as under:-

4.1 The Assessee company is an investment company belonging to the Jindal Group of companies. Jindal Group is mainly engaged in the manufacturing and production of ferrous metals and alloys. Jindal Group includes investment companies – such as the Assessee – which, *inter alia,* hold and transact in shares of the operational companies of the Group.

4.2 The Assessee filed its return of income on 28th December, 1990 declaring an income of Rs.75,510/-. In the computation of income, the Assessee had claimed a loss of Rs.40,22,350/-. The return was picked up for scrutiny and the AO passed an assessment order under Section 143(3) of the Act on 10th June, 1992. The said assessment was set aside by CIT(A) by an order dated 2nd February, 1993. Thereafter, a notice under Section 143(2) of the Act was issued to the Assessee and a fresh assessment order dated 28th July, 1993 was passed by the AO.

4.3 As on 1st April, 1989, the Assessee held 1,94,000 equity shares of Jindal Strips Limited (hereafter 'JSL'). JSL floated rights issue of fully convertible debentures (FCDs) of Rs.140/- each. In terms of the said issue, every shareholder would be entitled to subscribe to FCDs in the ratio of 2:1, that is, 1 FCD for every 2 equity shares held by the shareholders. Accordingly, the Assessee was offered 97,000 FCDs. Out of the aforesaid entitlement, the Assessee renounced rights to subscribe to 35,000 FCDs in favour of M/s Saw Pipes Ltd. (another company of the Jindal Group) at Rs.12/- per FCD, that is, at an aggregate consideration of Rs.4,20,000/-.

4.4 The Assessee claimed that the cum-right price of an equity share of JSL was Rs.270/- as on 27th October, 1989 and the said share was quoted ex-rights at Rs.208/-. The Assessee claimed that the cost of rights to subscribe to 35,000 FCDs was Rs.43,40,000/- (i.e. Rs.62 per share x 70,000 shares). Accordingly, the Assessee claimed that it had incurred a loss of Rs.39,20,000/- (Rs.43,40,000/- – Rs.4,20,000/-).

4.5 The AO noticed that the shares of JSL were held as closing stock and, accordingly, disallowed the notional cost of acquisition claimed by the Assessee. The Assessee held that any diminution in the value of stock of JSL – the basis on which the cost of acquisition of rights was claimed – would be reflected in the valuation of the closing stock of JSL. He also observed that the closing stock was valued at price of Rs.10.38/- per share against the market value of Rs.118/- per share and, thus, any loss claimed by the Assessee was only notional.

4.6 The Assessee appealed to the CIT(A) against the said assessment order (being Appeal No. 294/93-94). The CIT(A) allowed the aforesaid appeal and held that the loss claimed by the Assessee was allowable in terms of the decision of the Bombay High Court in ***CIT v. K.A. Patch***: **(1971) 81 ITR 413 (Bom).**

5. The Revenue preferred an appeal before the ITAT, which was rejected. Aggrieved by the same, the Revenue has filed the present appeal.

6. The present appeal was heard alongwith ***__Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.__***: **ITA No.130/2001** and the questions of law framed in present appeal and in ITA 130/2001 are also common. Further, the learned counsel for the parties contended that the material facts and issues in the present appeal were similar to the issues involved in ITA 130/2001 and a decision in ITA 130/2001 would also be determinative of the question in the present appeal.

7. Thus, in view of our decision in ***__Commissioner of Income Tax Delhi-I v. M/s Abhinandan Investment Ltd.__*****: ITA 130/2001** delivered today, the question of law is answered in favour of the Revenue and against the Assessee.

8. The appeal is allowed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

NOVEMBER 19, 2015
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