Commissioner of Income Tax Vs. Jannhavi Investments (P) Ltd.

Commissioner of Income Tax Vs. Jannhavi Investments (P) Ltd.

SooperKanoon Citation : sooperkanoon.com/346968

Court : Mumbai

Decided On : Jan-08-2008

Reported in : (2008)215CTR(Bom)72; [2008]304ITR276(Bom)

Judge : F.I. Rebello and; R.S. Mohite, JJ.

Acts : Securities Contracts Regulation Act, 1956 - Sections 2, 48 and 55(2); Finance Act, 1970; Finance Act, 1992

Appeal No. : IT Appeal No. 282 of 2001

Appellant : Commissioner of Income Tax

Respondent : Jannhavi Investments (P) Ltd.

Advocate for Def. : S.N. Inamdar and; A.K. Jasani, Advs.

Advocate for Pet/Ap. : Vinod Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

R.S. Mohite, J.

1. Heard both sides.

2. According to the Revenue the questions of law at serial Nos. 1, 2, 3 and 4 arise from the basic question as to whether the assessee was entitled to opt for the fair market value of certain shares as on the statutory date i.e. 1st April, 1981, even though the said shares were held as stock-in-trade as on that date.

3. The brief facts relevant for the decision of this question are that the respondents acquired certain shares of M/s Bharat Forge Ltd. in the year 1977. On the original holding they received bonus shares in the financial year 1981-82 and additional bonus shares in the financial year 1989-90. All the shares were held as stock-in-trade till 6th Nov., 1987. On the sale of the shares while working out capital gain, assessee computed fair market price as on 1st April, 1981. The AO held that since the assessee was holding the shares as stock-in-trade upto 2nd Nov., 1987 and as the said shares were not capital assets as on 1st April, 1981, the option adopted as fair market price as on 1st April, 1981 was not available to the assessee.

4. The Revenue (sic-assessee) had carried this matter to the CIT(A) and the appeal was partly allowed. In an appeal by the petitioner to the Tribunal, on the aforesaid issue, the Tribunal held in favour of the assessee and while doing so, reliance was placed upon the Division Bench judgment of this Court in the case of Keshavji Karsondas v. CIT : [1994]207ITR737(Bom) .

5. In the aforesaid case the subject matter of assessment were certain agricultural lands which were first acquired in the year 1941. When the said lands were acquired they were not capital assets. Later on, due to

effect of Finance Act, 1970, w.e.f. 1st April, 1970, the concerned agricultural lands fell within the amended definition of the term 'Capital asset'. The question before the Division Bench was as to what could said to be the 'cost of acquisition' of the said agricultural lands. It was held by this Court that what was relevant for computing the capital gains tax was the 'cost of acquisition' and not the cost on date on which the asset was treated as capital asset. That cost of acquisition was the cost of the asset on the date when the asset was actually acquired.

6. On behalf of the Revenue, it was sought to be contended by counsel for Revenue that the decision in the case of Keshavji Karsondas (cited supra) was distinguishable in the facts of the present case. Me pointed out that by Finance Act, 1992, w.e.f. 1993, the mode of computation of income chargeable under head 'Capital gain' had changed and the concept of 'indexed cost of acquisition' had been introduced and defined under Explanation III to the 5th proviso of Section 48. According to him the concept 'indexed cost of acquisition' was calculable on the basis of the cost of acquisition for the first year in which the asset was held or on the first day of April, 1981, whichever was later. He drew our further attention to Section 55(2)(b) which related to calculation of the cost of 'any other capital asset'.

7. In our view, there is no substance in the contention of the Revenue. The amendment of 1993 referred to hereinabove does not in any way nullify or dilute the ratio as laid down in the case of Keshavji Karsondas (supra). The cost of acquisition can only be the cost on the date of the actual acquisition. In the present case there was no acquisition of the shares on 6th Nov., 1987 when the same were converted from stock-in-trade to a capital asset.

8. The substantial question of law at serial Nos. 5 and 6 arise from the question as to whether the coupons received along with non-convertible debentures issued by Bharat Forge Ltd. were liable for capital gains? The question has been answered in the negative by the Tribunal after giving detailed reasons.

9. On perusal of the reasoning, we find no reason to disagree. The Tribunal held that in the case of such coupons there was no cost of acquisition. According to the learned Counsel appearing for the Revenue cost of acquisition would be as provided under Section 55(2)(aa)(ii). Nothing has been shown to us to convince us that the said coupons are a security within the meaning of Clause (h) of Section 2 of the Securities Contracts Regulation Act, 1956 which is an essential ingredient for the applicability of Section 55(2)(aa)(ii). No doubt, it may be a financial asset within the meaning of Section 55(2)(aa)(iiia). That provision however was brought into force subsequently and would not be applicable to the facts of the present case.

10. In the net result, the substantial questions of law as framed would not arise and the appeal stands dismissed.