

Ao Vs. Shiva Gases

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-08-2004

Reported in : (2005)1SOT21(Delhi)

Appellant : Ao

Respondent : Shiva Gases

Judgement :

This appeal is filed by the revenue against the order of the CIT (A) dated 6-12-1999 for assessment year 1996-97. The revenue has raised the following grounds of appeal: "1. On the facts and in the circumstances of the case, the learned CIT (A) erred in holding the transactions of sale of shares to be genuine and treating the loss thereon as capital loss.

2. On the facts and in the circumstances of the case, the learned CIT (A) erred in allowing the above relief without appreciating the fact that the sale of shares was manipulated through book entries to avoid the heavy tax liability on account of sale of tankers.

3. On the facts and in the circumstances of the case, the learned CIT (A) erred in allowing the above relief without appreciating that the shares were of promoter quota and could not have been sold in the lock-in-period. It is submitted that the sale consideration was not received by the assessee also. The shares were lodged for transfer after close of the financial year. Further there is no evidence to show that the alleged transfer took place before the close of financial year apart

from the book entry made.

4. The Learned CIT (A) erred in allowing the relief of loss of shares'sold'at much below their par value and that too without actual receipt of any consideration. It is submitted that the above 'book entry' was a colourful device adopted by the assessee to reduce the tax liability." The effective ground raised by the revenue is thus regarding the genuineness of loss of Rs. 45,50,000 claimed by the assessee during the year on sale of investments being shares in M/s. Bhagwati Gases Limited.

Briefly stated the facts are that for assessment year 1996-97, the assessee-company filed return of income on 31-10-1996 declaring an income of Rs. 45,770. During assessment proceedings, the assessing officer noticed that in the profit and loss account annexed with the return, the assessee has shown dividend income of Rs. 24,28,255.

Against this income, the assessee had debited the P&L account with the following two amounts : (a) A sum of Rs. 8,25,000 debited under the head'repair and maintenance' of assets sold; and But, looking into the particulars of sale of investment, assessing officer noticed that the loss of Rs. 2,70,000 has been worked out as under: The assessee had sold two tankers on 20-7-1995 and 29-7-1995 for Rs. 20,80,000 and Rs. 22,00,000 respectively. As the, WDV of this block of asset was ni4 the whole of the amount, according to the assessing officer, was taxable. The whole of the amount aggregating to Rs. 42,80,000 was taxable under the head business income. Regarding the claim of loss on sale of investment, assessing officer noticed that as per balance sheet of assessment year 1995-96, the assessee has shown investment in shares amounting to Rs. 2,51,56,900 and after claiming sale of shares during the year relevant for assessment year 1996-97, the investment as on 31-3-1996 has been shown at Rs. 56,56,900 in the balance sheet. With regard to the sale of shares of Bhagwati Gases Ltd. on which loss of Rs. 45,50,000 has been claimed as above, assessing officer held that these are non-genuine transactions and have been manipulated with the sister concerns with a view to reduce the tax liability on the sale of tankers. With regard to sale transactions claimed by the assessee, assessing officer has given the facts

in the assessment order, which are reproduced as under: "M/s. Kushal Holdings Pvt. Ltd. (Directors Shri Chetan Chaturvedi and Sh. Vivek Sharma) one lakh shares have shown to be sold on 18-2-1996 at the rate of Rs. 11.50 per share and the account of the company has been debited for Rs. 11,50,000 on 31-3-1996. A sum of Rs. 10,50,000 is still outstanding as on 31-3-1998.

(Directors Sh, Chetan Chaturvedi and Sh. Vivek Sharma) one lakh shares have shown to be sold on 13-2-1998 at the rate of Rs. 11.50 per share and the account of the company has been debited for Rs. 11,50,000 on 31-3-1996. A sum of Rs. 11,50,000 is still outstanding as on 31-3-1998.

(Directors Sh. R.S. Bhardwaj & Sh. Himanshu Sharma) one lakh shares have shown to be sold on 26-2-1996 at the rate of Rs. 11.50 per share and the account of the company has been debited for Rs. 11,50,000 on 31-3-1996. A sum of Rs. 9,75,000 is still outstanding as on 31-3-1998.

(Directors Sh. R.S. Bhardwai & Sh. Vivek Sharma) one lakh shares have shown to be sold on 28-2-1996 at the rate of Rs. 11.50 per share and the account of the company has been debited for Rs. 11,50,000 on 31-3-1996. A sum of Rs. 10,25,000 is still outstanding as on 31-3-1998.

(Directors Sh. Ram Rup Sharma & Sh. S.K. Sharma) two lakh shares have shown to be sold on 10-2-1996 at the rate of Rs. 11.50 per share. As per balance sheet for assessment year 1995-96 the assessee has given a loan of Rs. 5,00,000 and this year accounts of the company has been further debited for Rs. 23,00,000 on 31-3-1996. At the end of the financial year a sum of Rs. 28,00,000 is outstanding and a sum of Rs. 27,20,000 is still outstanding as on 31-3-1998.

(Directors Sh. B.K. Ratnakaran and Sh. L.C. Sharma) seven lakh shares have shown to be sold on 21-2-1996 at the rate of Rs. 11.50 per share.

As per balance sheet for assessment year 1995-96 the assessee has shown under the head advance received a sum of Rs. 73,82,500 and the account of the company has been debited on 31-3-1996 for Rs. 80,50,000." After looking into the surrounding facts and features of the share sale transaction, assessing officer held

these transactions to be non-genuine and manipulated ones broadly on the following grounds as enumerated vide para 6 of the assessment order : '(a) Shares of M/s. Bhagwati Gases Ltd., Bhagwati International Ltd. and Bhagwati Oxygen Ltd. were allotted to the assessee's firm from promoters quota in the years 1991 to 1994.

(b) All companies whose shares were allotted from promoters quota are related with the assessee's firms because partners and relatives of the partners of this firm are directors in these companies.

(c) The assessee firm has consistently shown these shares as investments in its books of account from very beginning. At no stage these investments have been converted into the stock-in-trade.

(d) The shares of a sister concern M/s. Bhagwati Gases Ltd. have been stated to be sold during this assessment year and all purchaser concerns are also related with the assessee's firm as partners and relatives of the partners are directors in it.

(e) In all cases sales have effected by book entries only as the sale consideration has not been received by the assessee firm till financial year 1997-98 for which the latest return is available. This means that even after more than two years sale proceeds have not been received.

(f) The assessee firm has not given any evidence to indicate that efforts were made for realizing the sale proceeds in, the period of two years.

(g) Sales in the case of M/s. S.K. Steels have been made to repay the loans taken from them ie., it is a clear cut case of book entry only.

Moreover, in every case shares have shown to be sold in the month of February 1996 but the accounts of the purchasers have been debited on 31-3-1998.

(h) Sales of shares have not been effected through Stock Exchange and the sale price of share is lowered by Re. 1 if compared with the quoted price of the share in the Economic Times dated 19-3-1996 which was Rs. (12.95), 12.95, 13, 12.20, 12.20 and dated 27-3-1996 which was Rs. (12.25), 12.25, 12.75, 12.25, 12.30.

(i) Shares have been sold on sale bill which is not instrument of sale prescribed for shares. The bills issued by the assessee are pen numbered and are not numbered with a machine or printed numbers. The bills of sale used for shares are the bills used for sale of gases because type of gases, total number of cylinders, quantity in Cu/Mts.

rate in Cu/Mts. per cylinder are mentioned on the bills. The bills have been amended by the assessee so as to include distinctive number of shares and other details such as rate, number of shares etc. The partnership deed filed by the assessee showing the object of partnership as to invest and deal in shares was entered into on 26-3-1992 and the shares have been shown to be sold in February 1996 and till this date ie. after a lapse of about four years, the assessee has not got printed the prescribed bills for sale of shares which itself shows the intention of the assessee.

(l) The assessee firm has not given any evidence till date to establish actual delivery of shares were made before the end of the financial year.

(k) Shares transfer deeds have been stated to be lodged in the name of the purchasers in the month of April 1996 ie. after the closing of the financial year.

(l) The assessee has never dealt in shares although in the partnership deed it has been mentioned that the object of the partnership shall be "to invest and deal in shares, stocks, bonds, debentures, obligations or other securities of any company, association or in government securities or in deposits with banks or otherwise" Assessing officer placed reliance on the decision of Supreme Court in the case of *Mcdowell & Co. Ltd. v. CTO* (1985) 154 ITR 148 (SC) and held that the entire gamut of sale transaction is merely a part of the tax planning resorted to by the assessee with a view to reduce the tax liability. The assessing officer, therefore, made addition of Rs. 45,50,000 to the income of the assessee holding that the loss claimed is non-genuine. While holding the transactions as merely colourable devices resorted to by the assessee to reduce the tax liability, assessing officer observed vide para 10 of the assessment order as under: "10. The assessee has sold the shares on credit and that too on loss which is very strange on the part of a prudent businessman. Moreover, the amounts have not been realized till the next

24 months or so. This is definitely a colourful device adopted by the assessee to reduce its tax liability. In McDowell case (154 ITR 148 S.C.), it was held by the Honble Supreme Court that it is obligation of every citizen to pay taxes honestly and without resorting to dubious methods. The colourful device cannot be a part of tax planning. The planning should not be construed with tax avoidance. If tax payer knowingly commits tax avoidance; it is not tax planning but attempted tax evasion. In this case, during the month of February-March the assessee had realized that he has to pay heavy tax on the gain arising out of the sale of tankers and to reduce the tax liability he has shown to have sold the shares to sister concerns and that too on credit. Actually, it was an after-thought to reduce its tax liability. This thing must have happened after the close of the financial year. Moreover, bills used for showing the sale of shares are pen numbered whereas the bills used for sale of tankers are machine numbered. At that time the assessee was not having the time to show the sales on cash basis as the period has already expired. The only way left with the assessee was to show the shares sold on credit. Since the shares belong to a sister concern and were shown sold, to another sister concern the manipulation were not difficult for the assessee to do. The assessee has moulded the things in his favour as all the group companies are involved in this whole episode. Though the assessee has filed a certificate from, M/s.

Bhagwati Gases Ltd. (another sister concern) that the shares were lodged for transfer in the month of April 1996 but the fact remains that no amounts have been realized in respect of the sale of shares.

All the transactions in respect of the sale of shares have been made through book entries only. The shares were sold to the sister concerns in the month of February 1996 whereas the accounts of the sister concern were debited on 31-3-1996 which further strengthen our findings that the whole thing is a manipulated one and afterthought. Generally a person sells things on loss when he/she is in need of funds but here the amounts are still outstanding so the basic element ie. need of funds is missing in the instant case. Actually, it is a concocted story to reduce the tax liability which cannot be accepted. I, therefore, add a sum of Rs. 15,50,000 to the income of the assessee based on the facts and circumstances discussed

above." Aggrieved, the assessee carried the matter in appeal before the CIT (A). CIT (A) held that the shares of Bhagwati Gases Limited in question were held as investment and not stock-in-trade and further that the transactions of sale are genuine and, therefore, loss on sale of shares is to be treated as capital loss and not as a trading loss as claimed by the assessee. While accepting the claim of genuineness of the sale transactions, learned CIT (A) observed that companies to whom shares have been sold are genuine entities and their books of account cannot be disbelieved on surmises and conjectures alone. Learned CIT (A) has drawn adverse inference against the revenue for the failure of the assessing officer to offer his comments on the submissions of the assessee. CIT (A) has further taken note of the fact that non-receipt of cash immediately cannot by itself come in the way of treating the transactions as genuine. CIT (A) accordingly directed the assessing officer to treat the share transactions as genuine and the loss in question was to be treated as capital loss as against trading loss claimed by the assessee. The revenue is aggrieved and hence the appeal.

On behalf of the revenue, learned Departmental Representative assailed the genuineness of the sale transactions on the various grounds enumerated by the assessing officer in the assessment order. Learned Departmental Representative submitted that it is an established proposition in tax jurisprudence that Income-tax authorities are entitled to look into surrounding circumstances to find out the reality. She strongly urged that the so-called sale transactions are merely colourable devices adopted by the assessee by routing the non-genuine transactions through the instrumentality of family concerns so as to reduce tax liability. According to her, the Full Bench decision of Honble Supreme Court in the case of McDowell (supra) is squarely applicable in the facts and circumstances of the case and the entire facts and circumstances eloquently reflect the motive of the assessee to defraud the revenue. She submitted that Bhagwati Gases Limited whose shares are held by the assessee firm as well as the six private limited companies to whom such shares have been shown as sold by the assessee firm are all closely related family concerns of the ass'essee with common directors and common partners. In this connection she invited our attention to the fact that the entire group comprising the assessee firm as well as the six companies to whom shares have been sold and M/s. Bhagwati Gases Limited whose shares have

been sold are closely related and controlled by the common group of individuals. She further submitted that no evidence whatsoever has been furnished by the assessee firm as to when the shares were handed over to the vendee companies. She stated that it is an admitted fact that transfer deeds have been lodged with Bhagwati Gases Limited in the month of April, 1996 ie. after the end of the accounting year under reference. There are no share brokers and transactions have been allegedly arranged amongst the family members without payment of any cash whatsoever.

Learned Departmental Representative pointed out that even though the sale transactions are claimed to have been entered in the month of February, 1996 yet no entries whatsoever have been passed in the books of the assessee firm as well as the vendee companies in February, 1996 regarding the so-called sale transactions. It was on 31-3-1996 that entries have been manipulated in the books of account in support of so-called sale transactions.

Learned counsel, on the other hand, submitted that the transactions are genuine. He stated that shares of Bhagwati Gases Limited were allotted to the assessee firm in the promoters quota and as per the guidelines of SEBI, such shares could have been sold to the other promoters without any restriction regarding the lock-in-period. In this connection, he invited our attention to the SEBI (Disclosure & Investor Protection) Guidelines, 2000. The relevant guidelines on which reliance was placed by him are as under: 4.16-1 (a) Shares held by the person other than the promoters prior to Initial Public Offering (IPO), which are locked-in as per clause 4.14 of these Guidelines, may be transferred to any other person holding shares which are locked-in as per clause 4.14 of these Guidelines subject to continuation of lock-in in the hands of transferees for the remaining period and compliance of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as applicable.

(b) Shares and promoter(s) which are locked-in as per the relevant provisions of this Chapter, may be transferred to and amongst promoter/promoter group or to a new promoter or persons in control of the company, subject to continuation of lock-in in the hands of transferees for the remaining period and compliance of

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as applicable." On the direction of the Bench, the learned counsel also produced the share transfer forms. Photocopies of these forms totalling to six have been kept on record. According to the learned counsel, the shares were transferred and subsequently the companies have also passed resolution as is indicated in these forms. The learned counsel, therefore, supported the order of learned CIT(A).

After careful consideration of the rival submissions and going through the orders of the tax authorities below as also the paper book filed by the learned counsel before us, we have no hesitation in holding that transactions in question are merely make-believe affair and are merely colourable devices resorted to by the assessee firm with the aid of its sister concerns as a part of tax planning to reduce its tax liability.

We find substance in the contention of the learned Senior Departmental Representative that the income-tax authorities are entitled to look into surrounding circumstances to find out the reality of the matter.

It has been held by Honble Supreme Court in CIT v. Durga Prasad More (1971) 82 ITR 540 (SC) at page 545 as under: "Now we shall proceed to examine the validity of those grounds that appealed to the learned judges. It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them.

They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

Now, coming to the question of onus, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each case. In some cases, the onus may be heavy whereas, in others, it may be nominal." The facts on record clearly, indicate that the six companies to whom shares of Bhagwati Gases Limited have allegedly been sold are private limited companies controlled and managed by closely connected persons who are partners in the assessee firm as well as directors in these companies. We find that in certain cases, even the addresses are identical. For example, in the case of Kushal Holdings Private Limited and Hill Queen Inv. Pvt. Ltd., the same address is mentioned in the share transfer form, Room No. 43rd Floor, 4085/24, Bharat Ram Road, Paharganj, New Delhi. Two of the vendees namely, M/s. Bhagwati Steels Pvt. Ltd. and S.K. Steels Pvt. Ltd. have identical address of Calcutta being 67, Park Street, Calcutta. Further, the company whose shares have allegedly been sold being Bhagwati Gases Limited has the same address as one of the transferee, namely, Rarnrup Credit & Leasing Pvt. Ltd., the address being S-492A, Greater Kailash-I, New Delhi- 110 048. We further find that the shares transfer form are signed by Shri Vivek Sharma who is director in as many as three transferee companies, namely, Lavino Portfolio Pvt. Ltd., Kushal Holdings Pvt. Ltd. and Rarnrup Credit & Leasing Pvt. Ltd. Another striking feature of the alleged sales transactions is that all the six transfer forms purportedly executed on different dates with different transferees have the same witness of NOIDA, namely, Shri T.P. Nandan, Sector 34, NOIDA. We further observed that page 9 of the paper book filed by the assessee shows that there are four partners of the assessee firm, namely, Mr.

R.S. Bhardwaj, Mrs. K.D. Bhardwaj, Smt. T.D. Sharma and Himanshu Sharma. However, in the transfer deeds produced before us, signatures of only three partners appeared and signatures of Himanshu Sharma, fourth partner are not appended.

From the facts on record, it appears to us that the so-called sales transactions have been manipulated by the assessee firm much after the close of the accounting year in the month of April, 1986 with a view to reduce the tax liability. The most telling feature which eloquently bring out the manipulation is the fact that

even though the transactions in question are claimed to be credit transactions and mere book entries have been made in the books of the assessee firm as well as the transferee companies yet all these entries are dated 31-3-1996 i e., much after the alleged date of sale transaction in February 1996.

We are unable to understand as to how after entering into transaction is the sale of shares in the month of February 1996, particularly when the transaction is a credit transaction, no entries are passed in the books even after share transfer forms along with shares have allegedly been handed over to the transferee companies. The whole story appears to us to be unreal and unusual. We cannot find fault with the revenue for refusing to swallow such a fanciful story. It appears to us that assessing officer has adduced cogent ground to disbelieve the story of sales which obviously is a story that does not accord with human probabilities. No evidence whatsoever has been adduced in support of the,alleged sales transactions having taken place in February 1996. As pointed out by the assessing officer, even the sale consideration for the shares has not been paid by the transferees even after a lapse of two yeas. The entirety of circumstances surrounding the alleged sale of shares by the assessee, when viewed in the context of human probabilities, leads to the irresistible inference that the sales transactions are sham and are merely an after-thought so as to reduce the tax liability.

Learned CIT (A) has been persuaded to accept the story of the assessee on the ground that the companies to whom the shares have been sold are independent entities and their books of account cannot be disbelieved on surmises and conjectures alone. We feel that the learned CIT (A) has ignored the facts of life. The facts are undisputed that the transferee companies are group companies under the direct control and management of partners of the assessee firms and their close relations. It is a blatant case whereby the instrumentality of the corporate entities of the group have been utilized - nay mis-utilized to reduce the tax liability of the assessee by using colourable devices. It is an established proposition increasingly accepted in the Anglo Saxon jurisprudence as well as in America and other countries that the court has power to disregard the corporate entity if it is used for tax evasion or to circumvent tax obligation. Various classes of

cases where the concept of corporate entity should be ignored and the veil drawn aside have been spelt out by various judicial authorities as well as eminent jurists from time to time and the Ghost of Salomon v. Saloman & Co. Ltd 1897 AC 22 has since been laid to rest. While it is not necessary for us to enumerate all cases where the corporate veil can be penetrated, one relevant to us is "when the corporate personality is being blatantly used as cloak for fraud or improper conduct." (Principles of Modern Companies Law, 4th Edition, 1979 at page 137): Penningtons Company Law, 5th Edition, 1985, at page 53, also states that- ". . . where the protection of public interest is of paramount importance, or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil. A professor of law, S. Ottolenghi, in his article From Peeping Behind the Corporate Veil, to Ignoring it Completely says "the concept of 'piercing the veil' in the United States is much more developed than in the U.K. The motto, which was laid down by Sanborn J. and cited since then as the law, is that 'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. The same can be seen in various European jurisdictions'". (1990) 53 Modern Law Review 358. Indeed, as far back as 1912, another American Professor, L.

Maurice Wormser, examined the American decisions on the subject in a brilliantly written article Piercing the Veil of Corporate Entity (published in (1912) XII Columbia Law Review 496 and summarized their central holding in the following words: When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of five, up-and-doing, men and women shareholders, and will do justice between real persons." At this stage, it would be useful to refer to the observations of the Hon'ble Supreme Court in CIT v. Shri Meenakshi Mills Ltd. (1967) 63 ITR 609 (SC) wherein it has been observed at page 616 : "It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But in certain exceptional cases the court is

entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade." More recently, Supreme Court in the Full Bench decision in *Mcdowell & Co. Ltd's case* (supra) observed at page 161 : "It is up to the court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of 'emerging' techniques of interpretation as was done in *Ramsay's case* (1981) 2 WLR 449; (1982) AC 300, *Burmah Oil* (1982) Simons Tax Cases 30 and *Dawson's case* (1984) 1 All ER 530; 2WLR226(HL), to expose/the devices for what they really are and to refuse to give judicial benediction." We may further refer to the decision of Supreme Court in the case of *Workmen Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd.* (1986) 157 ITR 77 (SC) wherein the Supreme Court observed as under: "It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But in certain exceptional cases the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade." The Full Bench decision of Honble Supreme Court in *Sunil Siddharthbhai v. CIT* (1985) 156 ITR 509 (SC) has enunciated an identical proposition that the assessing officer while entering upon a scrutiny of the transactions is entitled to penetrate the veil and ascertaining the truth. In this decision, Supreme Court observed at page 523 of the report : "If the transfer of the personal asset by the assessee to a partnership in which he is or becomes a partner is merely a device or use for converting the asset into money which would substantially remain available for his benefit without liability to income-tax on a capital gain, it will be open for his benefit without liability to income-tax on a capital gain, it will be open to the income-tax authorities to go behind the transaction and examine whether the transaction of creating the partnership is a genuine or a sham transaction and, even where the partnership is genuine, the transaction of transferring the personal asset to the partnership firm represents a real attempt to contribute to the share capital of the partnership firm for the purpose of carrying on the partnership business or is nothing but a device or ruse to convert the personal asset into money substantially for the benefit of the assessee while evading tax on

a capital gain. The Income Tax Officer will be entitled to consider all the relevant indicia in this regard, whether the partnership is formed between the assessee and his wife and children or substantially limited to them, whether the personal asset is sold by the partnership firm soon after it is transferred by the assessee to it, whether the partnership firm has no substantial or real business or the record shows that there was no real need for the partnership firm for such capital contribution from the assessee. All these and other pertinent considerations may be taken into regard when the Income Tax Officer enters upon a scrutiny of the transaction, for, in the task of determining whether a transaction is a sham or illusory transaction or device or ruse, he is entitled to penetrate the veil covering it and ascertain the truth." Applying the principles laid down by the Hon'ble Supreme Court in the aforesaid decisions, we feel that cumulative effect of surrounding facts and circumstances concerning the sales transactions of the transferee companies clearly indicate that such transactions are sham and illusory ones and have been entered into as an after-thought with a view to reduce the tax liability of the assessee firm. The view taken by the learned CIT (A) on the basis of treating the transferee companies as independent entities is, therefore, entirely mis-conceived and cannot be sustained.

For the aforesaid reasons, we are inclined to hold that sales transactions in question are sham and illusory ones and, therefore, loss of Rs. 45,50,000 claimed on such transactions is non-genuine. The finding of the learned CIT (A) on the issue is, therefore, reversed and the appeal of the revenue is allowed.

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