

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 415/2007

COMMISSIONER OF INCOME TAX Vs. DB (INDIA) SECURITIES LTD.

02.07.2009

Present: Ms. Prem Lata Bansal with Mr. Paras Chaudhry for appellant.

Mr. Salil Kapoor with Mr. Sanat Kapoor for the respondent.

The admitted facts are that the assessee/respondent herein is a member of the Delhi Stock Exchange and is carrying on the business of shares and stock broking along with the allied activities such as broker / sub-broker, underwriters to new issues of shares, debentures and securities of all kinds, brokers and fixed deposit of companies, trading in shares, investment consultants, etc. The assessee had purchased shares of M/s. Mannu Finlease Ltd. in January and February 1996 on behalf of and on instructions from its sub-broker M/s. Glory Securities Ltd. Total value of these shares purchased by the assessee was Rs.1,06,10,247/- at an average price of Rs.55/- per share. The said sub-broker had made payment to the extent of Rs.64 lacs only. As remaining amount of Rs.41,37,881/- was not paid, the assessee did not deliver those shares to the sub-broker. However, in the said year, brokerage was shown as income in the Income-Tax Return, which was assessed as well. Since balance payment was not made in the next year also, presumably because of the reason that the price of shares fell from Rs.55/- per share to Rs.5/- per share, the assessee in its Income-Tax Return for the assessment year 2001-02 claimed deduction of Rs.41,37,881/- as "bad debt" under Section 36(1)(7) of the Income Tax Act, 1961 (for short, the "Act"). This deduction was initially disallowed by the Assessing Authority, which was affirmed by the Commissioner of Income-Tax in appeal, but the Income-Tax Appellate Tribunal, in the appeal preferred by the assessee, has allowed the said deduction vide its impugned orders dated 8.9.2006.

Learned counsel for the Revenue, in this appeal filed against the aforesaid order, has canvassed two submissions:-

- (1) The aforesaid amount could not be treated as "debt" at all under the provisions of Section 36(2) of the Act and, therefore, the question of treating it as "bad debt" does not arise.
- (2) The assessee had not sold the shares to anybody else in the market and in the absence of such a sale, the assessee could not claim the aforesaid amount as "bad debt".

Insofar as the first submission of learned counsel for the Revenue is concerned, we do not find any force therein.

As pointed out in the aforesaid admitted facts, the assessee had purchased the aforesaid shares on behalf of the sub-broker and, in fact, paid the amount of Rs.1,06,10,247/-. As against this amount, he received only a sum of Rs.64 lacs. The brokerage which was received in the aforesaid transaction was shown as income by the assessee in the previous year, which was taxed as such as well by the Assessing Authority. Under these circumstances, only because shares were not delivered for want of full payment, which was to be made by the sub-broker to the assessee, it cannot be said that there was no transaction between the parties.

Once we proceed on the basis that there was a valid transaction between the assessee and the sub-broker and the assessee had to make payment on behalf of the sub-broker, which he could not recover to the extent of Rs.41,37,881/-, that sum has to be treated as “debt”.

However, we find merit in the second contention of learned counsel for the Revenue. As pointed out above, shares remained in the possession of the assessee. Therefore, the assessee could sell the said shares in the market for whatever consideration it could fetch and that was to be adjusted against the balance amount of Rs.41,37,881/- payable by the debtor, i.e. the sub-broker, to the assessee, before arriving at the actual figure of “bad debt”. This aspect has not even been looked into by the ITAT in its impugned order.

For this reason, we set aside the order passed by the ITAT and remit the case back for fresh consideration after taking account the aforesaid aspects of the matter.

This appeal is allowed in the aforesaid terms.

A.K. SIKRI, J.

VALMIKI J. MEHTA, J.

July 02, 2009