In the High Court of Punjab and Haryana, Chandigarh

I.T.R. No. 122 of 1990

Date of Decision: 2.5.2007

The Commissioner of Income Tax, Amritsar

…Petitioner

Versus

Shri Kapil Bharany (Indl.)

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: None.

JUDGMENT

M.M. KUMAR, J

The revenue has claimed that various substantive questions of law under Section 256(1) of the Income Tax Act, 1961, would arise from the order dated 31.7.1989, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in I.T.A. No. 682 (ASR)/1987, in respect of assessment year 1982-83. Accordingly, the Tribunal has referred the following question of law for our determination:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that loss on the sale of 50 shares and 150 shares of Rs. 100/- each purchased on 19.8.1977 and 23.10.1980 respectively of

> M/s Kashmir Woollen Pvt. Ltd., Co. represented business loss and if so, could such loss be allowed under the head business?"

A perusal of the statement of case would show that the Assessing Officer has allowed short term capital loss of sale of 150 shares of M/s Kashmir Woollen Pvt. Ltd. to the extent of Rs. 13,500/-. The claim made by the petitioner in respect of other 50 shares purchased by him on 19.8.1977 was declined for the reason that would not constitute long term capital loss. The CIT (A) upheld the order of the Assessing Officer that there was no question of holding the investment as capital investment because intention of the assessee in such situation could not be labelled as capital investment. It also refers to the fact that the assessee had not acquired the shares in a concern for the sake of acquiring capital asset. However, the Tribunal accepted the appeal of the assessee by observing as under:-

> "7. After hearing the parties' representatives, in my considered view, the assessee should succeed because of fortuitous circumstances, in as much as, there happened to be two purchases as mentioned above in this order. I would have inclined to take a different view and uphold the Revenue's approach but the fact that the shares purchases on 23.10.1980 also came to be sold before 31.3.1982 showed that the assessee had bought shares of the company in the hope of making some profits as a businessman in which attempt he failed. Therefore,

reversing the orders of the lower authorities, I direct that the entire loss of Rs. 18,000/- be allowed under the head 'business', which shall have the effect of the loss of Rs. 4,500/-, being adjusted against the taxable income. The necessary amendment in the assessment order shall be made by the Assessing Officer."

It is, thus, obvious that total amount involved is merely Rs. 4,500/-. The amount being very small, we are not inclined to go into the question and return the same un-answered.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

May 2, 2007
Pkapoor