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January 29

THE COMMISSIONER OF INCOME TAX, DELHI AND RAJASTHAN

v.

M/S. NATIONAL FINANCE LTD.

(S.K. DAS, M. HIDAYATULLAH and J.C. SHAH, JJ.)

Income Tax—Capital loss or trading loss—Dealer in spares—Acquisition of shares to get agency of company —Subsequent sale of shares incurring loss—Whether trading loss —Application to Tribunal dismissed as barred by limitation— Reference to High Court dismissed—Appeal by Special Leave against Tribunal's decision—Maintainability.

The respondent was a company dealing in shares and securities and belonged to a group of companies all controlled by the same persons. In the year of account, corresponding to the assessment year 1951-52, the respondent sold the shares relating to Madhusudan Mills Ltd., which it had acquired sometime earlier, suffering a loss for which it claimed a set-off against the profits in that year. The Income-tax Officer found that the shares in question had been purchased by J, a company belonging to the group, at a price which was almost double the current market price, that it was so done with a view to removing the sellers from their managing agency and to securing for the respondent the purchasing and selling agency of the Mills, and that after the purchase J achieved the purpose in view of its controlling interest and the purchasing and selling agency of the Mills was given to the respondent, though the latter had done no more than give a loan to J. It was also found that soon after the purchase the shares in question came into the possession of the respondent and that when the shares were sold it was not in the market but at a loss to another company belonging to the same group. The Income tax Officer came to the conclusion that in getting the shares the respondent did not deal with them as stock-in-trade but was acquiring a capital asset of an enduring nature. Accordingly, he disallowed the claim holding the loss to be a a capital loss. The Appellate Tribunal, however, held in favour of the respondent on the view that a distinction must be made between the respondent company and J.

The Commissioner of Income-tax moved the Tribunal for a reference to the High Court, but it was dismissed on the ground that though it was barred only by one day and there was no negligence on the part of the Commissioner, the Tribunal had no power to extend time. An application to the High Court was also dismissed. The Commissioner of Income-tax then applied for and got special leave to appeal against

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the order passed by the Tribunal. When the appeal came on for hearing in due course the respondent raised an objection that the appeal was not maintainable because no appeal was filed against the order of the High Court, and relied on the decision in *Chandi Prasad Chokani* v. *State of Bihar*, (1962) 2 S.C.R. 276.

Held, that the appeal was maintainable because there was no question of by-passing the order of the High Court which only related to the correctness of the decision of the Tribunal on the question of limitation which was not the subject of the present appeal.

Held, further, that there were special circumstances which justified the grant of special leave.

Baldev Singh v. *Commissioner of Income-tax* (1960), 40 I.T.R. 605, applied.

Chandi Prasad Chokhani v. *State of Bihar* (1962), 2 S.C.R. 276, distinguished.

Held, also, that, on the facts, the object was to purchase a large block of shares at a much larger price than the market value to acquire certain agencies of a profitable character, that the purchase of the shares by J was merely a device but the controlling interest was acquired by the respondent, and that the transaction must be regarded as one on the capital side.

Ramnarain Sons (P.) Ltd v. *Commissioner of Income-tax*, (1961) 2 S.C.R. 904 and *Oriental Investment Co. Ltd.* v. *Commissioner of Income-tax*, (1958) S.C.R. 49, applied.

Salomon v. *Salomon & Co. Ltd.* (1897) A.C. 22, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 559 of 1960.

Appeal by special leave from the judgment and order dated May 1/14, 1957, of the Income Tax Appellate Tribunal of India (Delhi Bench) in I.T.A. No. 2070 of 1956-57.

K.N. Rajagopal Sastri and *D. Gupta*, for the appellant.

Radhey Lal Agarwal and *P.C. Agarwal*, for the respondents.

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1962. January 29. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—This is an appeal against the order of the Income-tax Appellate Tribunal, Delhi Bench, dated May 1/14, 1957, by which the tribunal, reversing the order of the Appellate Assistant Commissioner, held that a loss arising from the sale of certain shares by the respondent Company was a capital loss. Subsequent to the order of the Tribunal impugned here, the Commissioner of Income-tax, New Delhi, who is the appellant before us, had moved the Tribunal for a reference to the High Court on certain questions of law said to arise out of the order of the Appellate Tribunal. That application was found to be barred by one day, and since, under the law, the Tribunal had no jurisdiction to extend the time, the application was dismissed. Against the decision of the Tribunal, an application was filed in the High Court under s. 66(3) of the Income-tax Act; but the High Court dismissed the application, agreeing with the Tribunal that the application to the Tribunal for a reference was barred by time. The Commissioner of Income-tax then applied for special leave against the order passed by the Tribunal in the appeal before it, and the present appeal, with special leave, has been filed.

Before we examine the merits of the case, we shall deal with a preliminary objection raised on behalf of the respondent that the appeal is incompetent, in view of the decision of this Court in *Chandi Prasad Chokhani* v. *State of Bihar* (1) where it was held that this Court would not entertain an appeal directly from an order of the Tribunal bypassing the decision of the High Court, except in very exceptional circumstances. The appellant relies upon the decision of this Court in *Baldev Singh* v. *Commissioner of Income tax* (2), and contends

(1) [1962] 2 S.C.R. 276. (2) [1960] 40 I.T.R. 605.

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that the exceptional circumstances existing in the latter case and adverted to in the former, govern the present case.

The facts relating to the filing of the application for reference together with the relevant dates are these: The Tribunal's order was passed by two learned Members, who signed their respective orders on different dates. The Accountant Member signed his order on May 1, 1957, and the Judicial Member, on May 14,1957. The notice of the order was sent to the Commissioner of Income-tax, New Delhi, and reached his office by registered post on July 15, 1957. It was received by one Motilal Pathak, a clerk in the office of the Commissioner. Motilal's affidavit shows that he suddenly fell ill, and had to take casual leave for the day. He returned to the office the next day, and dealt with the notice received from the Tribunal. By a mischance, which is easy to appreciate, the date stamp of the receipt of the papers was affixed on the 16th, and bore that date instead of the real date, viz., the 15th, on which the papers had actually been received. Relying upon the date stamp, everybody took it for granted that limitation would expire on the 60th day, counting time from July 16, 1957. The application was filed on the last day of limitation on that supposition. Actually, the application was barred by a day. The Income-tax Tribunal, therefore, dismissed the application on December 4, 1957. The decision of the Tribunal was unsuccessfully challenged before the High Court. It is evident that the decision of the Tribunal was quite correct, and the Tribunal had no option but to dismiss the application, since the law gives no jurisdiction to the Tribunal to extend limitation, as is done under s. 5 of the Indian Limitation Act.

This Court then granted special leave against the order of the Tribunal passed in the appeal

before it, and the question is whether the appeal should be heard or the leave revoked, in view of the decision in *Chokhani's* case (1). In *Chokhani's* case (1), the attempt was to bypass the decision of the High Court on a question referred to the High Court for decision and also another decision of the High Court that no other point of law arose from the order of the Tribunal. It was held that this Court would not allow the High Court to be bypassed, and that an appeal from the decision of the Tribunal in the circumstances was incompetent. A similar view was again expressed in two other cases, viz., *Indian Aluminium Co. Ltd.* v. *Commissioner of Income-tax* (2) and *Kanhaiyalal Lohia* v. *The Commissioner of Income-tax* (3). In all the three cases, reliance was placed by the appellants therein upon the decisions of this Court in *Dhakeswari Cotton Mills, Ltd.* v. *Commissioner of Income-tax* (4) and *Baldev Singh* v. *Commissioner of Income-tax* (5) It was pointed out in the judgments of this Court that the two cases relied upon were decided on the special circumstances existing there. In the first, there was a question of breach of the principles of natural justice, which could not be raised otherwise than by an appeal with the special leave of this Court. In the second case, it was pointed out that limitation was lost by the party through no fault of his, inasmuch as a letter was unduly delayed in post. In our opinion, in the present case also, special circumstances which justified the grant of special leave in *Baldev Singh's* case (5), exist. There was a combination of circumstances which led to the filing of the application a day late, but in circumstances showing that the default was not due to any negligence on the part of the Commissioner of Income-tax. The receipt of the notice on July 15 is admitted; but the affixing of the date stamp on the 16th was due to the failure of the

(1) [1962] 2 S.C.R. 276.
(2) C.A. No. 176 of 1959, decided on April 24, 1961.
(3) [1962] 2 S.C.R. 839. (4) [1955] 1 S.C.R. 941.
(5) [1960] 40 I.T.R. 605.

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clerk to deal with the notice on the 15th because he fell ill and had to leave the office. It is common knowledge that date stamps are altered every day in the office, and this is done mostly by a very junior employee. The affixing of the date stamp on the 16th and the notice consequently bearing that date went unnoticed, and relying upon the date stamp, the appeal was filed, though on the last day of limitation but within time. In these circumstances, it is difficult to say that the Commissioner of Income-tax was negligent and the negligence, if any, on the part of the clerk in affixing a wrong date stamp is excusable, if one considers his illness and his absence from the office on the 15th. In our opinion, this case comes within the rule of *Baldev Singh's* case (1) and an appeal direct to this Court from the Tribunal's order is justified by the special circumstances. By this appeal, no decision of the High Court can be said to be bypassed, because the decision of the High Court related to the correctness of the decision of the Tribunal on the question of limitation, which is not a question which is sought to be raised in an indirect way by the present appeal. We, therefore, overrule the preliminary objection.

The assessee Company is the National Finance Ltd., New Delhi. It is a public limited Company which was incorporated in 1943. It deals in shares and securities and also as financiers. The present case arises from a deal in 3,000 shares of the Madhusudan Mills Ltd., Bombay, by the assessee Company. In the year of account, May 1, 1949, to April 30, 1950, corresponding to the assessment year, 1951-52, the assessee Company sold these shares suffering a loss of Rs. 5,48,712 8-0, which it claimed as one on the sale of its stock-in-trade. The Income-tax Officer and the Appellate Assistant Commissioner held it to be a capital loss. The

(1) [1960] 40 I.T.R. 605.

Appellate Tribunal, Delhi Bench, reversed the decision, and held in favour of the assessee Company. The only question in this appeal is whether the decision of the Tribunal is right.

The assessee Company belongs to a group of Companies controlled by one Lala Yodh Raj Bhalla and certain persons associated with him. It is convenient to describe these persons as the 'Yodh Raj Bhalla group'. These Companies are (1) Jaswant Sugar Mills Ltd., (2) Jaswant Straw Boards Ltd., (3) National Finance Ltd., (4) National Construction and Development Corporation Ltd., (5) Ganesh Finance Corporation Ltd., and (6) Raghunath Investment Trust Ltd. The interrelation of these Companies is very intimate, and they are practically owned by the 'Yodh Raj Bhalla group' To understand this, the following analysis of the shareholdings of these Companies must be sufficient :

(1) Jaswant Sugar Mills Ltd.
2,00,000 shares

(i) Jaswant Straw Board Ltd.	44,845
(ii) National Finance Ltd.	67,390
(iii) National Construction and Development Corporation Ltd.	47,800
	1,60,035

(i.e. over 80 per cent)

(2) Jaswant Straw Board Ltd.
6,176 shares.

(i) National Finance Ltd.	4,783
(ii) National Construction and Development Corporation Ltd.	500
	5,200 odd

(or nearly 84 per cent)

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(3) National Finance Ltd. (assessee Company) 50,000 shares.
Ganesh Finance Corporation Ltd. 48,000
(or over 96 per cent)

(4) National Construction and Development Corporation Ltd. 1,30,504 shares.
Ganesh Finance Corporation Ltd. 1,30,500
(almost all)

(5) Ganesh Finance Corporation Ltd. 50,000 shares.
Raghunath Investment Trust Ltd. 49,795
(99.6 per cent of the capital)

(6) Raghunath Investment Trust Ltd. 10,000 shares.

(i) Mr. Yodh Raj Bhalla	1,500
(ii) Mrs. Bhalla	1,000
(iii) Mr. N. C. Malhotra (brother-in-law)	1,000
(iv) Mr. Ram Prasad (father-in-law)	1,000
(v) Mr. Dina Nath (Secretary)	1,000
(vi) National Finance Ltd.	3,499
(vii) Mr. Piyare Lal Saha	1
	9,000

(90 per cent).

The resulting position may be stated thus : Ganesh Finace Corporation Ltd. practically owns the assessee Company and National Construction and Development Corporation Ltd., Raghunath Investment Trust Ltd. practically owns the Ganesh Finance Corporation Ltd., and 'Yodh Raj Bhalla group' practically owns Raghunath Investment Trust Ltd.

Jaswant Sugar Mills Ltd. is practically owned by Jaswant Straw Board Ltd., National Finance Ltd., and National Construction and Development Corporation Ltd., and Jaswant Straw Board Ltd. is practically owned by National Finance Ltd., and National Construction and Development Corporation Ltd. Thus, the entire group is owned by a consortium, and there is no doubt about it.

The shares of Madhusudan Mills Ltd. were acquired in the following circumstances: In July 1948, Mr. Yodh Raj Bhalla, who was in a position by reason of his holdings in these six Companies to influence decisions of the Board of Directors, arranged to purchase 26,547 shares of the Mills from Messrs. Bhadani Brothers, Ltd., who were the managing agents of the Mills. This block of shares represented about 80 per cent of the total issued capital of the Mills. The purchase was made at Rs. 400 per share, when the price in the market, was about Rs. 250 per share. Out of the remaining shares which were on the market 200 shares were purchased at Rs. 252-8-0 per share, which was then the quoted price. Now, these shares were purchased by Jaswant Sugar Mills Ltd., but the money for the purchase of the shares was obtained by borrowing it from some of the other concerns. These Companies, as has been shown above, were completely under the control of 'Yodh Raj Bhalla group'. The arrangement for the money was as follows:

Rs. 14,75,000 — borrowed from the assesee Company.

Rs. 5,00,000 — from National Construction and Development Corporation Ltd.

Rs. 55,00,000 — from the assessee Company but advanced by Ganesh Finance Corporation Ltd.

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The shares were registered as follows :

10,500 shares registered in the name of the assessee Company.

5,400 shares in the name of the National Construction and Development Corporation Ltd., and the balance in the names of the nominees of Jaswant Sugar Mills Ltd., which meant, largely, persons belonging to the 'Yodh Raj Bhalla group'.

On October 9, 1949, the assessee Company purchased 15,547 shares at Rs. 400 per share from Jaswant Sugar Mills Ltd., and the amount paid by the assessee Company was adjusted towards the purchase price and the balance was paid. On the same day, the remaining 11,000 shares were sold by Jaswant Sugar Mills Ltd. to National Construction and Development Corporation Ltd., at Rs. 400 per share. Thus, on that date Jaswant Sugar Mills Ltd. ceased to have any connection with the present matter. It may be pointed out that on the date on which the two transactions took place, the price ruling in the market was about Rs. 217-8-0. Before Jaswant Sugar Mills Ltd. parted with the shares, they had appointed a new Board of Directors of the Madhusudan Mills Ltd., and these new Directors also belonged to the same group. The managing agency of Messrs. Bhadani Brothers Ltd. was terminated, and on the same day on which the shares were purchased from these managing agents, the assessee Company was appointed as the purchasing and selling agent of the Mills. The assessee Company made enormous profit from the acquisition of these shares by way of dividend and commission as the purchasing and selling agent. In October and November, 1948 they, however, sold 6,525 shares to Dalmia Cement and Marketing Company Ltd. at Rs. 400 per share. These shares subsequently came back to the same group ; but

that is not a matter with which we are immediately concerned.

On April 7, 1949, 4,500 shares were sold by the assessee Company to the National Investment Trust Ltd. at Rs. 181 per share resulting in a loss of Rs. 8,80,000, and on June 1, 1949, another block of 3,000 shares was sold to the National Investment Trust Ltd., at Rs. 180 per share, resulting in a loss of Rs. 5,86,312. We are not concerned with the loss arising from the first sale which was considered in the assessment year, 1950-51, and in respect of which a reference is pending in the High Court of Punjab. We are concerned with the loss in the second year relating to the assessment year, 1951-52. In that year, the loss on the sale of the shares was sought to be set off against the profits made, and the loss practically cancelled the profits. The shares which were sold by the assessee Company on the two occasions were sold to one Amrit Bhushan (a relative of Mr. Yodh Raj Bhalla) who sold then the same day to Messrs. National Investment Trust Ltd., at the slender profits of 8 annas per share, which was brokerage. Thus, at the beginning and at the end, though numerous transactions had taken place, the shares continued to be the property of the 'Yodh Raj Bhalla group'. The question is whether the loss on the sale of the shares be set off against the profits in the year in which the sales and profits were respectively made.

The assessee Company was assessed for the assessment year, 1950-51, by the Income-tax Officer, Meerut. In that year, the loss of Rs. 8,78,062-8-0 arising from the sale of Rs. 4,520 shares of Madhusudan Mills Ltd. was set off against the profits of the assessee Company. The case of the assessee Company for the assessment year, 1951-52, was considered by the Income-tax Officer, Central Circle V, New Delhi, to whom the cases of the other Companies above-named were also transferred. By looking into the

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affairs of these Companies, he came to learn, that the shares of the Madhusudan Mills Ltd. were purchased at a price, which was almost double the current market price, by the 'Yodh Raj Bhalla group,' and were transferred at the same price to the assessee Company. He found that this was done with a view to removing Messrs. Bhadani Brothers, Ltd. from their managing agency and to securing for the assessee Company the purchasing and selling agency of the Mills. On the date of the purchase from Messrs. Bhadani Brothers, Ltd., Jaswant Sugar Mills Ltd. achieved this purpose in view of their controlling interest. Bhadani Brothers, Ltd. ceased to be the managing agents from that date, and the purchasing and selling agency of the Madhusudan Mills, Ltd. was given to the assessee Company, though it had, on that day, done no more than give a loan to Jaswant Sugar Mills Ltd. In the assessment year, 1951-52, the loss of Rs.5,86,312-8-0 on the sale of 3,000 shares was, therefore, disallowed holding it to be a capital loss. The order of the Income-tax Officer, Central Circle V, New Delhi was confirmed on appeal by the Appellate Assistant Commissioner. On further appeal by the assessee Company, the Income-tax Appellate Tribunal, Delhi, reversed the order of the Appellate Assistant Commissioner, and held that the loss was a trading loss.

Whether a particular loss is a trading loss or a loss on the capital side undoubtedly depends upon the facts of each case. But it has been held, over and over again, that the question is not one of pure fact, and that a mixed question of fact and law is always involved. The cases to which we shall make a reference presently, have laid down this proposition, and those cases have also indicated how the matter is to be viewed in the context of facts. In *Commissioner of Income-tax* v. *Ramnarain Sons Ltd.* (1), the Company was a dealer in shares

(1) [1957] 31, I.T.R. 17.

and also carried on the business of acquiring managing agencies of other Companies. The Company acquired the managing agency of a Textile Mill from Messrs. Sassoon J. David and Co. Ltd., and also agreed as part of the same transaction to buy 2,507 shares of the Mills. 1,507 shares were purchased at Rs. 2,321-8-0 per share, and the remaining 1,000 shares were purchased at Rs. 1,500 per share. These shares were quoted on the market at Rs. 1,610. Later,4,000 shares were sold at a loss of Rs. 1,78,000. This was shown in the books of the Company as a business loss, but was disallowed, as the shares were not held to be the stock-in-trade of the business of the Company as share dealers. On a reference to the High Court of Bombay, a Divisional Bench upheld the view of the Tribunal. Chagla,C. J., in delivering the judgment of the Court, observed that a managing agency being an asset of an enduring nature, the way to look at the matter was to enquire what was the primary intention in acquiring the shares. The learned Chief Justice then referred to a judgment of this Court reported in *Kishan Prasad & Co. Ltd.* v. *Commissioner of Income-tax* (1), where it was observed:

> "It seems that the object of the assessee Company in buying shares was purely to obtain the managing agency of the third mill which no doubt would have been an asset of an enduring nature and would have brought them profits but there was from the inception no intention whatever on the part of the assessee Company to re-sell the shares either at a profit or otherwise deal in them."

The learned Chief Justice then considered the argument that a block of shares might have to be bought, if at all, at a higher price, and observed as follows:

> "A dealer in shares may succeed in getting a large number of shares at a price less than

(1) [1955] 27 I.T.R. 49.53.

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the market price if the seller is in difficulties and wants to get rid of his shares and to get liquid assets. But we have not heard of a dealer in shares purchasing a large number of shares at a higher value than the market value. The other circumstance which is equally strong in this case is that the shares were purchased for the acquisition of the managing agency. Therefore the real object of the assessee company was not to do business in these shares, not to make profit out of these shares, but to acquire a capital asset out of which it would earn managing agency commission and make profit."

Messrs. Ramnarain and Sons. Ltd. then appealed to this Court, and the decision of the Bombay High Court was upheld. The Judgment of this Court is reported in *Ramnarain Sons (Pr.) Ltd.* v. *Commissioner of Income-tax* (1). It was laid down by this Court that in considering whether a transaction was or was not an adventure in the nature of trade, the problem must be approched in the light of the intention of the assessee, having regard to the "legal requirements which are associated with the concept of trade or business". Dealing with the price above the market price which was paid in that case, it was observed:

> "Even assuming that the appellants acquired the entire block of 2,507 shares from M/s. Sassoon J. David & Co. Ltd.—the shares transferred to the names of the directors being held by them merely as nominees of the appellants—the price per share was considerably in excess of the prevailing market rate. The only reason for entering into the transaction, which could not otherwise be regarded as a prudent business transaction, was the acquisition of the

(1) [1961] 2 S.C.R.904.

> managing agency. If the purpose of the acquisition of a large block of shares at a price which exceeded the current market price by a million rupees was the acquisition of the managing agency, the inference is inevitable that the intention in purchasing the shares was not to acquire them as part of the trade of the appellants in shares."

The above two decisions are merely the application of a principle of long standing, which has been stated over and over again in the past. In *Oriental Investment Co. Ltd.* v. *Commissioner of Income-tax* (1), that principle was reiterated, and it was that the object for which a company was formed did not invest the deal with the characteristics of a trade in shares, but that other circumstances along with that fact must be considered to find out the real object of a particular venture.

Before we deal with the present case, one other case of this Court may be noticed. In *Rajputana Textiles* v. *Commissioner of Income-tax* (2), the converse conclusion was reached. There, on the facts and circumstances of the case, it was held that a particular deal in shares was a commercial venture and had all the attributes of an adventure in the nature of trade. In that case, the transaction was not a single or an undivided one with a slump payment, because for the managing agency, Rs. 12,50,000 were paid separately and for the shares, a sum of Rs. 83,98,000 was paid. The two acquisitions being different, the profit on the sale of some of the shares was considered to be a gain on the revenue side.

There is no doubt, whatever, that the shares of the Madhusudan Mills Ltd. were acquired at a price considerably higher than the market price. In fact, that the price paid was almost double. Such a deal, from the business point of view, was not prudent, unless the purchaser stood to gain in some

(1) [1958] S.C.R. 49. (2) [1961] 42 I.T.R. 743.

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other way. It was contended before us that this was a speculative deal in the hope that the price of the shares would firm up, when the textile industries would revive. If this was the intention, then it might possibly be argued that the purchasers miscarried in their calculations, and suffered a loss in a business transaction. But, was this the intention of the Directors of Jaswant Sugar Mills Ltd. ? Those who sold the shares were not only in possession of the shares but also of the managing agency of the Madhusudan Mills Ltd., and the intention of the Directors of Jaswant Sugar Mills Ltd. was to remove the sellers from their position as managing agents and to get the entire benefit of such or other agencies for themselves. The assessee Company has urged that that might have been the intention of the Jaswant Sugar Mills Ltd. but not of the assessee Company which had, on that day, merely given a loan to Jaswant Sugar Mills Ltd. Curiously enough, however, the immediate benefit of the deal was the acquisition of the selling and purchasing agency of the Mills, and that was obtained not in favour of Jaswant Sugar Mills Ltd. but of the assessee Company, even though on July 15, 1948 (the date of purchase) the assessee Company had obtained registration of 10,500 shares by way of security in its own name. Why the assessee Company was favoured in this way is not far to seek. It mattered not whether Jaswant Sugar Mills Ltd. acquired that agency or the assessee Company; the benefit thereof went to the same group of persons. The transaction of sale of the shares was also made within three months of their purchase, and the assessee Company not only bought the 10,500 shares which stood in its name but 15,547 shares, which gave the assessee Company a controlling voice in the affairs of the Mills. The assessee Company continued to retain the selling and purchasing agency, which was very profitable. Indeed, on its investment in the first year of Rs. 14 lakhs odd, it

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made a profit of about Rs. 7 lakhs. The question, therefore, would be whether the assessee Company in purchasing the shares merely wished to deal in shares as stock-in-trade, or was acquiring a capital asset of an enduring nature. This question is not one of fact, pure and simple, but one of an inference in law from the proved circumstances of the case.

The Income-tax Officer, in deciding this question against the assessee Company, pointed out numerous circumstances, which showed clearly that this was not a mere purchase of shares as shares by a speculator, who, buying a big block, sometimes pays slightly more than the market rate. Bhadani Brothers Ltd., owned not only the shares but also the managing agency, and it is obvious that they would not part with the shares without charging for the managing agency. The price of Rs. 400 per share was so out of proportion to the market price that it indicated, by itself, the acquisition of something more than the mere shares. According to the Income-tax Officer, the real intention was to acquire lucrative agencies of the Mills, and this intention, whether it was held by Jaswant Sugar Mills Ltd. or the assessed Company or both, was of the same body of persons. The Appellate Assistant Commissioner endorsed the view of the Income-tax Officer; but the Tribunal made a distinction between one Company and another, and that distinction has been pressed upon us by the assessee Company. Relying upon the well-known case of *Salomon* v. *Salomon & Co. Ltd.* (1), it was argued before us that each company must be viewed as a separate entity, and that the intention of one company could not be attributed to another company, even though the proprietorship of the companies might be same. As a proposition affecting companies, it cannot be gainsaid; but we are not concerned with a theoretical question as to the assessee Company being a separate legal entity, but with the

(1) [1897] A. C. 22.

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question whether a particular loss made by the assessee Company is a capital or a revenue loss. The two Companies, *i. e.*, Jaswant Sugar Mills Ltd. and the assessee Company, were directed by the same set of persons, and the facts show that even though Jaswant Sugar Mills Ltd. temporarily acquire the shares, they conferred all the benefits of the acquisition upon the assessee Company from the very first day. The assessee Company also ultimately came into possession of all the shares along with another Company, which was also directed by the same persons, and Jaswant Sugar Mills Ltd. went out of the picture within three months. In these circumstances, it is easy to see that the interposition of Jaswant Sugar Mills Ltd. was merely a device to secure the benefit of the English case, to which we have referred. It was never intended that Jaswant Sugar Mills Ltd. would hold the shares or the benefits arising from the acquisition of a block of shares, giving to the holder a decisive voice in the affairs of Madhusudan Mills Ltd. That controlling interest was acquired by the 'Yodh Raj Bhalla group' for the benefit of the assessee Company, and it was an acquisition of an interest of an enduring nature.

Reference was made, in this connection, to the transactions with the Dalmia Cement and Marketing Co. Ltd. in which the latter paid the same price namely, Rs. 400 per share. Perhaps, the Dalmia Company was after the controlling interest in its own way, and it is significant to note that within a short time, those shares again found their way in the hands of the same group. Similarly, the shares changed hands even within this group through the agency of Amrit Bhushan, no doubt a broker but also a relative of Mr. Yodh Raj Bhalla, who profited only to the extent of 8 annas per share, and bought and sold the shares from one Company to another on the same day. All this show that the affairs of these Companies were centrally arranged, and the

intention was to benefit the assessee Company by the acquisition of a large block of shares at a very much larger price than obtaining in the market, to acquire certain agencies of a profitable character.

In our opinion, this transaction must be regarded as one on the capital side. Shares were never treated as part of the stock-in-trade. They were not sold in the market, but were sold at a loss to another Company belonging to the same group, with the obvious intention of setting off the losses against the profits, thus cancelling the profits, and saving them from taxation.

In the result, the appeal is allowed with costs on the respondent.

Appeal allowed.

EMPLOYERS IN RELATION TO THE BHOWRA COLLIERY

v.

THEIR WORKMEN

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Bonus—Malis Working in officers bungalows—Whether entitled—Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 *of* 1948) *s.* 5.

In exercise of the power conferred by s. 5 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, the Central Government framed a Bonus Scheme for the payment of bonus to employees of coal mines. Paragraph 3 of the scheme made every employee in a coal mine eligible for a bonus except, *inter alia*, "a mali on domestic and personal work". The question for consideration was whether under this paragraph the malis working in the officers' bungalows had any right to bonus.

Held, that these malis were not entitled to any bonus under the Bonus Scheme. Paragraph 3 contemplated malis who were employees of the colliery owners and were yet on domestic work. Domestic meant as of the home. The malis