SARDAR INDRA SINGH AND SONS LTD.

v.

COMMISSIONER OF INCOME-TAX, WEST BENGAL.

1953

Sep. 23.

[PATANJALI SASTRI C.J., S. R. DAS, VIVIAN BOSE, GHULAM HASAN and BHAGWATI JJ.]

Income-tax Act (XI of 1922), s. 10—Income—Sale of shares and securities—Company carrying on business as financiers and promoters of companies—Income from sale of securities—Whether assessable—Tests.

The question whether surplus arising from the sale of shares and securities is assessable as profits or gains or is only an appreciation of capital arising from a change of investment depends on whether the sales which produced the surplus were so connected with the carrying on of the assessee's business that it could be fairly said that the surplus is the profits and gains of the business.

It is not necessary that the surplus should have resulted from such a course of dealing in securities as by itself would amount to the carrying on of a business of buying and selling securities. It would be enough if such sales were effected in the usual course of carrying on the business, or, in other words, if the realisation of securities is a normal step in carrying on the assessee's business.

Punjab Co-operative Bank Ltd. v. *Income-tax Commissioner, Lahore* (67 I.A. 464) followed.

Where one of the objects of a company was to carry on the business of financiers and to purchase, acquire, and sell stock, shares, business concerns and other undertakings and the company held a large number of shares in other companies and was realising its holdings and acquiring new shares, and it was engaged in financing and promoting the business of other companies:

Held, that the sale of investments and the making of fresh investments was directly connected with the carrying on of the company's business and profits made by the company by sale of shares and securities were assessable to income-tax.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 40 of 1952.

Appeal from the Judgment and Order dated the the 15th May, 1950, of the High Court of Judicature at Calcutta (Harries C. J. and Sinha J.) in its Special Jurisdiction (Income-tax) in Income-tax Reference No. 7 of 1949.

N. C. Chatterjee (*R. P. Khosla*, with him) for the appellant.

C. K. Daphtary, Solicitor-General for India (*G. N. Joshi*, with him) for the Commissioner of Income-tax.

1953. September 23. The Judgment of the Court was delivered by

PATANJALI SASTRI C.J.—This is an appeal from a judgment of the High Court of Judicature at Calcutta answering a question referred to it by the Income-tax Appellate Tribunal under section 66 of the Indian Income-tax Act, 1922.

The appellant is a private limited company incorporated in the year 1935 under the Indian Companies

Act with the following objects, among others, set out in the memorandum of association:

To carry on and undertake any business, transaction, operation or work commonly carried on or undertaken by bankers, capitalists, promoters, financiers, concessionaires, contractors, merchants, managers, managing agents, secretaries and treasurers.

To purchase or otherwise acquire, and to sell..... stock, share.....business concerns and undertakings.

To invest and deal with the moneys of the company not immediately required for the company's business upon such securities and in such manner as may from time to time be determined.

The company held a large number of shares in other incorporated companies and was realising some of its holdings and acquiring large blocks of shares in other companies. In the return for the assessment year 1938-39 the company showed a loss of Rs. 3,22,221 as a result of the sales of shares and securities during the previous year and this was allowed as a business loss in the computation of its profits. In the assessment for the years 1939-40, 1940-41 and 1941-42, however, the company claimed that the surplus resulting from similar sales during the corresponding account years was not taxable income as such surpluses resulted from a mere change of investments and was, therefore, a capital gain. The income-tax authorities rejected this claim and taxed the surplus in each of those years as the profits and gains of the company's business of dealing in shares. On appeal, the Income-tax Appellate Tribunal confirmed the assessment orders but on somewhat different grounds. After an elaborate analysis of such transactions from the commencement of the company's business, the Tribunal came to the following conclusion:

"From the foregoing particulars it is clear that the company has been financing and promoting the business of other companies. For this purpose, it had to vary its holdings from time to time, quite a number of shares held by the company have been of a speculative character. To hold these investments and to finance

several companies (managed or otherwise) the appellant company had to resort to obtaining loans and overdrafts. It is, therefore, clear that shares were acquired by the appellant company in the ordinary course of its business and they became its stock-in-trade. The profit on sale of these shares did not essentially arise out of the sale of investment of any surplus funds. It is, therefore, clear that the sale of investments and making of fresh investments are linked up with the business of the company as financiers, inasmuch as investing and realising its holdings when finance were needed is part of the normal business of the company.....There is ample evidence to show that the company did in fact carry on the business of financiers, which is one of the objects mentioned in clause 3 (1) of the memorandum of association. The evidence pertaining to the financial transactions of the company, during the relevant accounting years, to which we have referred, clearly establishes that the realisation of profits on investment is directly referable to the carrying on of the company's business as financiers."

In this view, the Tribunal considered it unnecessary to decide whether the profits are taxable as profits and gains of the company from the business of dealing in shares.

On application by the company the Tribunal referred the following question to the High Court for its decision :

On the facts and circumstances of the case, is the surplus realised by the company on the sales of shares and securities a taxable income ?

The court answered the question in the affirmative but gave leave to the company to appeal to this court.

The principle applicable in all such cases is well settled and the question always is whether the sales which produced the surplus were so connected with the carrying on of the assessee's business that it could fairly be said that the surplus is the profits and gains of such business. It is not necessary that the surplus

should have resulted from such a course of dealing in securities as by itself would amount to the carrying on of a business of buying and selling securities. It would be enough if such sales were effected in the usual course of carrying on the business or, in the words used by the Privy Council in *Punjab Co-operative Bank Ltd.* v. *Income-tax Commissioner, Lahore*(1), if the realisation of securities is a normal step in carrying on the assessee's business. Though that case arose out of the assessment of a banking business, the test is one of general application in determining whether the surplus arising out of such transactions is a capital receipt or a trading profit. The question is primarily one of fact and there are numerous cases falling on either side of the line but illustrating the same principle. On the facts found in regard to the nature and course of the company's business, there can be no doubt that the present case falls on the Revenue's side of the line.

Agreeing with the High Court that there was ample material upon which the Appellate Tribunal could arrive at the conclusion which they did, we dismiss the appeal with costs.

Appeal dismissed.

Agent for the appellant: *S. C. Banerjee.*

Agent for the respondent: *G. H. Rajadhyaksha.*