

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO**

INCOME TAX TRIBUNAL APPEAL NO: 230 OF 2008

Appeal filed under section 260-A of the Income Tax Act, 1961 against the order dated 14.09.2007 in I.T.A.No.459/HYD/2003 for A.Y.1999-2000 on the file of the Income-Tax Appellate Tribunal, Hyderabad Bench 'B' at Hyderabad.

Between:

M/s.Laxmipriya Investments Pvt Ltd, C/o.Shri S.Rama Rao [Advocate], Flat No.103, Indiradevi Nilayam, 3-6-542/4, 7th Street, Himayatnagar, Hyderabad.

...APPELLANT

AND

Deputy Commissioner of Income Tax, O/o.Circle-2 [4], Hyderabad.

...RESPONDENT

**Counsel for the Appellant : Mr. A.V.A. Siva Kartikeya representing
Mr. A.V. Krishna Koundinya**

**Counsel for the Respondent : Ms. J. Sunita Senior Standing Counsel for
Income Tax Department**

The Court delivered the following:

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE SRI JUSTICE P. SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SUDDALA CHALAI ATHI RAO

INCOME TAX TRIBUNAL APPEAL No.230 OF 2008

Date :: 05.12.2025

Between :

M/s. Laxmipriya Investments Pvt. Ltd.,
C/o. Shri S.Rama Rao, Advocate,
Flat No. 103, Indiradevi Nilayam,
3-6-542/4, 7th street, Himayatnagar,
Hyderabad.

...Appellant

AND

Deputy Commissioner of Income Tax,
Circle-2 (4), Hyderabad.

...Respondent

JUDGMENT: *(per Hon'ble Sri Justice P. Sam Koshy)*

The instant appeal has been filed by the appellant under Section 260A of the Income Tax Act, 1961 (**for short, 'the Act'**) assailing the order dated 14.09.2007 in I.T.A.No.459/HYD/2003 passed by the Income Tax Appellate Tribunal, Bench 'B', at Hyderabad (**for short, 'the impugned order'**).

2. Heard Mr. A.V.A. Siva Kartikeya, learned counsel appearing on behalf of Mr. A.V. Krishna Koundinya, learned counsel for the appellant; and Ms. J.Sunita, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondent.

3. The assessment year in the instant appeal is 1999-2000.
4. *Vide* the impugned order; the Tribunal had affirmed the order passed by the Commissioner of Income Tax (Appeals), dated 31.12.2002, who in turn confirmed the order passed by the assessing officer, dated 31.12.2002.
5. The appeal was admitted on the following substantial questions of law, viz.,

"a). Whether on the facts and circumstances of the case, the Hon'ble Tribunal is right in confirming the orders of the Commissioner of Income Tax (Appeals) who further enhanced the assessment by Rs. 93,67,150/- disallowing the loss claimed by the assessee?

b). Whether on the facts and circumstances of the case, the Hon'ble Tribunal is right in rejecting the purchase price of Rs. 108 paid by the assessee on the ground that the parties to the transaction are group companies without any legal basis?"

6. The dispute revolves around disallowance made by the assessing officer under Section 40A(2) of the Act. The capital loss claimed by the appellant was disallowed by the assessing officer. The stand of the respondent-Department was that in order to avoid capital gain, the assessee had shown the capital loss which is nothing but a colourable device adopted by the appellant with an intention of avoiding tax.
7. The appellant-Company filed its return on 31.12.1999 declaring a business loss of Rs.3,60,36,883/- and taxable capital gain at the

rate of Rs.1,95,14,059/-. The case was processed under Section 143(1) of the Act and the return filed by the appellant was selected for scrutiny. Thereafter, show-cause notices were issued. Upon perusal of the records, it was found that the appellant-assessee showed purchase of 5,26,900 shares for an amount of Rs.5,38,77,900/-. Out of the said purchase, subsequently 5,09,100 shares were shown to have been sold for an amount of Rs.1,47,94,335/-, thereby reflecting heavy loss of treating of shares. Upon verification it was further found that all the trading of shares have been made within the company which are part of the group of companies where the Directors were common in these companies. Further, there was lot of mismatch and discrepancies available so far as detail of the dates of purchase and the sale of such shares. In the course of scrutiny, it was also found that even though there is a reflection of sale of shares to other sister concerns are concerned, but payments were not in fact made but only book entries were available by way of adjustment of loans. The respondent-Department had also put the appellant-Assessee on notice asking it to produce the broker notes and other documents to prove that the transactions in fact did take place on the give dates and at the given rates. But the appellant-Assessee had failed to provide any evidence in this regard. The assessing officer also found that certain purchases of shares were made of which payments were already made quite some time earlier. It was found by the

assessing officer that payments were made in advance for purchase at the given rate. Whereas, it was detected that the appellant-assessee in fact even earlier itself had entered into an agreement with another sister firm by issuing a letter for purchase of shares, that too for an altogether different price. Taking into consideration the factual matrix of the case, the assessing officer reached to the conclusion that the transactions were done in the regular course of business but only with a view to reduce the tax liability. It was also found that the purchase of shares made by the appellant-assessee, the market value of which was shown @ Rs.4,614/- whereas the appellant-assessee is said to have purchased the same @ Rs.108/- per share. Thus, the assessing officer was of the view that such investments would not be done by any prudent person. The appellant-assessee aggrieved by the impugned order of assessment dated 28.03.2002 preferred an appeal before the appellate authority; and the appellate authority, after scrutiny of grounds of appeal and on verifying the same from the documents and records brought before the appellate authority, found that the findings arrived at by the assessing officer seems to be perfectly justified particularly taking into consideration the large scale lapses, mismatch and discrepancies and also the contradictions those were reflected during assessment of the appellant-Company. Further, the appellate authority also found that there were no resolution of the Board of Directors, and there was also no material available so far as

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any Board meeting being held. There also no resolution to show that the company had decided to purchase the shares at a higher price. In the course of scrutiny, the appellate authority also found that even the Minutes Book was in a haphazard condition inasmuch as these books were not in a bound format; pages were loose and they were not serially numbered. The appellate authority had also found that the transactions made were all in between and within the sister concerns.

8. Considering the aforesaid factual aspects, the appellate authority had also confirmed the order passed by the assessing authority. It was these two orders which were later subjected to challenge by the appellant-Assessee before the Tribunal, wherein the Tribunal had passed the impugned order.

9. Learned counsel for the appellant contended that the Tribunal erred in holding that the loss claimed by the appellant is one which would not fall under Section 37(1) of the Act, and the Tribunal also erred in holding that the loss incurred is because of the assessee. Thus, the disallowance of set-off of carry forward loss was also an erroneous finding. The learned counsel for the appellant further contended that the Commissioner of Income Tax (Appeals) erred inasmuch as reducing the cost of shares for the purpose of computation and capital gains, and at the same time, directing the Assessing Officer to enhance the income by Rs.39,51,970/-.

10. According to the learned counsel for the appellant, the Tribunal failed to appreciate the findings given by the Assessing Officer while declaring the transaction to be a sham transaction. However, at the same time, it had allowed the cost at the rate of Rs.41.14/- to be treated as the market price. The Tribunal while confirming the order of the Commissioner of Income Tax (Appeals) found serious doubts on the appellant conceding that the purchase of the shares by the appellant was at Rs.108/- and sale of shares have been at a much lower price. According to the learned counsel for the appellant there was no reason to believe the finding given by the authorities, as on the one hand, the Tribunal holds Rs.108/- per share to be acceptable and at the same time, the Tribunal doubts the purchase of shares at Rs.108/- to be highly excessive.

11. *Per contra*, the learned Senior Standing Counsel for the Department contended that unless there is some element of fraud or mis-chief proved that the money paid for consideration of shares have come back to the appellant-assessee itself the findings arrived at by the Assessing Officer and confirmed by the next higher authority i.e., the Tribunal does not warrant interference as they are concurrent findings of fact.

12. Having heard the contentions put forth on either side and on perusal of records, what is primarily reflected from the proceedings is

that the entire sale and purchase of shares is within the same group company having common directors, which forces the Bench to have serious doubts insofar as the sale and purchase of shares is concerned and doubt the entire transaction being carried out with a sole intention of saving tax and in process has avoided showing capital gains and at the same time has shown a substantial capital loss.

13. It was the finding of the Tribunal that the non-registration of a compulsorily registerable document relating to immovable property itself renders the said document inadmissible in evidence. Further, the finding of the Tribunal also classified that the expression 'commercial expediency' in itself is an expression which carries a broad meaning. Expenditure in commercial expediency includes such expenditure which any normal prudent man might incur for the purpose of his business. Further, according to the Tribunal, the expenses incurred might not have any direct bearing on the core business but they may still be considered permissible if justified by commercial expediency. The Tribunal also went on to decide that the expenditure laid out excessively for the purpose of business shall be allowed, however, when it was examined it clearly reflected that the transactions were not in the nature of acquiring assessee's business objects. Therefore, the question of liability of expenditure under Section 37(1) of the Act does not arise.

14. Further, what is also evident from the proceedings is that the findings given by the Tribunal are based upon the judicial precedents both of the Tribunal as also of the different High Courts, some of which are **Siddho Mal & Sons vs. ITO (Delhi)**¹, **Eastern Investments Ltd., vs. CIT**², **Swadeshi Cotton Mills Co. Ltd. vs. Commissioner of Income-tax**³ and other similar judicial precedents, all of which, still holds good and have not been reversed by superior forums.

15. The Tribunal recorded a categorical finding that for any expenditure to be allowed, it must satisfy the test of commercial expediency. The Tribunal did not find any strong cogent proof or material available on record, nor could the assessee demonstrate that the action of the Revenue authorities was dishonest, vindictive, nor otherwise was capricious move on the part of the Revenue in implicating the appellant. Further, the Tribunal upon examining the records found that there was neither any element of commercial expediency, nor any compelling or reasonable justification explaining the circumstances under which the excessive purchase price was paid.

16. Thus, there being a strong concurrent finding of fact by the authorities in the Department and finally by the Tribunal, we do not find any strong case made out by the appellant-assessee calling for an

¹ 122 ITR 839 (Delhi)

² (1951) 20 ITR 1 (SC)

³ [1967] 63 ITR 57

interference to the impugned order passed by the Tribunal. The appeal therefore deserves to be and is accordingly dismissed. No costs.

17. As a sequel, miscellaneous petitions pending if any, shall stand closed.

SD/- MOHD. ISMAIL
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Income-Tax Appellate Tribunal, Hyderabad Bench 'B' at Hyderabad.
2. One CC to Mr. A.V. Krishna Koundinya, Advocate [OFC]
3. One CC to Ms. J. Sunita Senior Standing Counsel for Income Tax Department [OPUC]
4. Two CD Copies

DL/PSL

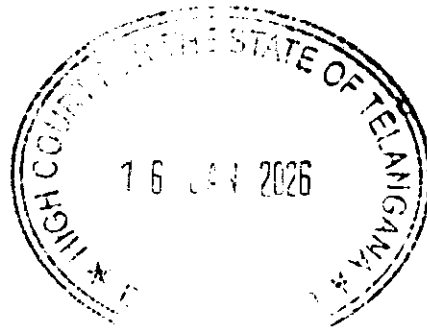


HIGH COURT

DATED:05/12/2025

JUDGMENT

ITTA.No.230 of 2008



DISMISSING THE APPEAL

⑥ MT
27/12/25