

A NIRMAL TRADING COMPANY

v.

COMMISSIONER OF INCOME TAX, CENTRAL (CALCUTTA)

October 10, 1979

B [N. L. UNTWALIA AND R. S. PATHAK, JJ]

"Speculative transactions"—Transactions of sale and purchase settled by handing over delivery orders and payment by cheques—Transactions are 'Speculative Transactions' and attract the provisions of Explanation 2 to section 24(1) of Income-tax Act, 1922.

C The assessee entered into several transactions of sale and purchase with different parties, and the transactions were settled by handing over delivery orders. There was no evidence and no plea was taken that actual delivery of the goods was ever effected either to the assessee or to the subsequent purchasers from him.

D Dismissing assessee's appeal by certificate under section 66A(2) of the Income Tax Act 1922, the Court

HELD : In the absence of any suggestion that actual delivery of goods was ultimately effected and in view of the case of the assessee, throughout being that handing over of the delivery orders was sufficient as constituting actual delivery of the goods, the transactions, in the present case, attracted Explanation 2 to section 24(1) of the Income-tax Act, 1922. [901 C-E]

E *Davenport & Co. (P) Ltd. v. Commissioner of Income-tax, West Bengal II, (1975) 100 I.T.R. 715, followed.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2310 of 1972.

From the Judgment and Order dated 11-12-1970 of the Calcutta High Court in Income Tax Ref. No. 101/62.

F *P. V. Kapoor, Anil Sachthey, Miss Bina Gupta and Praveen Kumar* for the Appellant.

T. A. Ramachandran and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by

G PATHAK, J.—This appeal by certificate under section 66A (2) of the Indian Income Tax Act, 1922 relates to the application of Explanation 2 to s. 24(1) of the Indian Income Tax Act.

H The assessee deals in paper, hessian and B. Twill. After assessment by the Income Tax Officer for the assessment year 1955-56, and thereafter an appeal disposed of by the Appellate Assistant Commissioner, the Income Tax Appellate Tribunal in second appeal found that certain transactions entered into by the assessee could not be

described as “speculative transactions” within the meaning of Explanation 2 to s. 24 (1) of the Indian Income Tax Act, 1922 and allowing the appeal it directed that the loss suffered by the assessee should be set-off under s. 24(1) of the Act. At the instance of the Revenue, the Appellate Tribunal referred the following question to the High Court at Calcutta for its opinion :—

“Whether, on the facts and in the circumstances of the case, the loss of Rs. 1,03,688/- was the result of speculative transactions within the meaning of Explanation 2 to section 24(1) of the Indian Income Tax Act, 1922, and therefore, was not allowable to be set off under section 24(1) of the said Act ?”

The High Court has answered the question in favour of the Revenue.

It appears the assessee entered into several transactions of sale and purchase with different parties, and the transactions were settled by handing over delivery orders. There is no evidence that actual delivery of the goods was ever effected either to the assessee or to subsequent purchasers from him. All that passed were the delivery orders and payment by cheque. The High Court has taken the view that in the absence of actual delivery the transactions attracted Explanation 2 to s. 24(1) and must be regarded as “speculative transactions.” It seems to us that the High Court is right having regard to the law laid down by this Court in *Davenport & Co. P. Ltd. v. Commissioner of Income-Tax, West Bengal II*⁽¹⁾. It is urged on behalf of the assessee that the case falls under *Raghunath Prasad Poddar v. Commissioner of Income-Tax Calcutta.*⁽²⁾ But that decision has been overruled by this Court in *Davenport & Co. P. Ltd.* (supra), and in any event no question of invoking that decision arises because in the present case there has never been any suggestion that actual delivery of goods was ultimately effected. The case of the assessee throughout has been that handing over of the delivery orders was sufficient as constituting actual delivery of the goods.

In the result, the appeal fails and is dismissed with costs.

S.R.

Appeal dismissed.

(1) [1975] 100 I.T.R. 715.

(2) [1973] 90 I.T.R. 140.