Patna High Court

Raja Bahadur Kamakhya Narain ... vs Commissioner Of Income-Tax Bihar ... on 15 April, 1963

Equivalent citations: 1964 53 ITR 663 Patna

JUDGMENT CHOUDHARY J. - In these two cases the assessee is Raja Bahadur Kamakhya Narain Singh of Ramgarh. In Miscellaneous Judicial case No. 342 of 1954 the assessment year is 1945-46 and the accounting period is 1944-45. In Miscellaneous Judicial Case No. 346 of 1954, the assessment year is 1946-47 and the accounting year is 1945-46.

It appears that during the minority of the assessee his estate was under the control and management of the court of wards, and, on his attaining majority, the estate was handed over to him on the 19th of August, 1937. At the time of handing over to him on the 19th of August, 1937. At the time of handing over the estate to the assessee, Government securities to the extent of Rs. 40,00,000 were also made over to him. most of the securities were sold by him in the accounting year 1938-39 for a sum of Rs. 44,25,088. By the sale of these securities the assessee made a profit of Rs. 4,55,305. During the same period, he purchased other securities worth Rs. 9,55,994. But only a few months after, he sold away the same at a small loss. The excess amount realised by the sale of securities was, however, assessed in the assessment year 1939-40 by the Income-tax Officer. But the Appellate Tribunal, on appeal, took the view that those transaction were merely in the course of change of investment and there was no business motive, and held that the surplus was not assessable to income-tax. From the sale proceeds, referred to above, the assessee opened an account under the head "Account of Rs. 48 Lakhs floating in the share market". In 1939, also, the assessee purchased shares and debentures, however, were sold by the assessee in October, 1939, for Rs. 5,75,723; in 1940 for Rs. 29,58,677 and in 1941 for Rs. 64,201. By the first two sales, the assessee got a profit of Rs. 1,17,064 and Rs. 25,133 respectively. But in the third sale, he incurred a loss of Rs. 1,642. The surplus amounts received by the assessee were accordingly, assessed by the Income-tax officer, in the assessments year 1940-41 and 1941-42. On appeal, the Tribunal held that there was no continuous business activity and the object of the appellant was to make investment as the surplus funds and not carrying on business in share dealing. Accordingly, it was held that the surplus amount was not business income and was not assessable to income-tax.

Between the 28th June, 1940, and the 9th November, 1940, the assessee purchased 68,109 tolas of gold for a sum of Rs. 28,47,381 and between the 9th October, 1944, and the 20th October, 1944, and he sold away 55,494 tolas of gold for a sum of Rs. 36,80,174, and by the sale thereof he got a profit of Rs. 13,43,469. Again some time in October, 1945, gold weighing 1,576 tolas was sold for Rs. 99,279 resulting in a profit of Rs. 33,481. The Income-tax Officer in the assessment years 1945-346 and 1946-47 assessed to income tax the surplus realised by the assessee from the sale of gold holding that the underlying motive of these transactions was profit making and that it was not a case of mere investment of unrequired capital as such. The assessee was also assessed on income from house rent in both the assessment years and his objection to the assessment on this item of property was overruled by the Income-tax Officer. During the period between the 8th December, 1944, and the 20th April, 1945, the assessee purchased 7,205 Karanpura shares for rs. 2,37,267 and during the period between the the 8th November, 1945. and the 21st February, 1946, he sold 6,950 shares costing Rs. 2,34,563 for Rs. 3,28,085 gaining a profit of Rs. 93,522, Deducting Rs. 5,000 as interest on bank overdraft and other incidental expenses in connection with purchase and sale of the shares,

the Income-tax officer assessed the assessee on the balance of Rs. 88,522 On appeal, the Appellate Tribunal upheld the assessment and the application of the assessee for making a reference to this court was rejected by that Tribunal. The assessee then moved this court was rejected by that Tribunal. The assessee then moved this court under section 66(2) of the upon the Income-tax Appellate Tribunal to state a case and to refer it to the High court on the following question of law.

M.J.C. 342 "(1) Whether the excess receipt of Rs. 13,43,469 realised by the assessee on the sale of gold is exempted from being taxed under the provisions of section 4(3)(vii) of the Income-tax Act as receipt of casual and non recurring nature not arising from business or adventures in the nature of business ?

(2) Whether in the facts and circumstances of the case the amount of rent of houses forming part of the impartible property is assessable in the hands of the assessee ?"

M.J.C. 346 : "(I) Whether the excess receipt of RS. 33,481 realised by the assessee on the sale of gold is exempted from being taxed under the provisions of section 4(3)(vii) of the Income-tax Act as receipt of casual and non-recurring nature not arising from business or adventures in the nature of business ?

(2) Whether in the facts and circumstances of the case the amount of rent for house forming part of the impartible property is assessable in the hands of the assessee ?

(3) Whether the amount of Rs. 88,522 received by the assessee as profit realised on the sale of shares and securities is liable to be taxed in his hands ?"

The Income-tax Appellate Tribunal accordingly, stated the case and referred it to this court its opinion on the questions of law referred to above in the two cases.

At the time the cases were originally heard, this court, after hearing counsel for both parties, was of the opinion that in order to bring out the real controversy between the parties, the first question in both the cases should be re-framed as under :

M.J.C. 342 "Whether in the facts and circumstances of the case the receipt of Rs. 13,43,469 realised by the assessee from the sale of gold is taxable as income, profits and gains of the assessee for the assessment year 1945-46 ?"

M.J.C. : "Whether the excess receipt of Rs. 33,481 realised by the assessee from the sale of gold is taxable as income, profits and gains of the assessee for the assessment year 1946-47 ?"

After re-framing of the questions, referred to above, the following question of law arise for the opinion of the High court :

M.J.C. 342 : "(1) Whether in the facts and circumstances of the case the receipt of Rs. 13,43,469 realised by the assessee from the sale of gold is taxable as income, profits and gains of the assessee

for the assessments year 1945-46 ?

(2) Whether in the facts and circumstances of the case amount of rent of houses forming part of the impartible property is assessable in the hands of the assessee ?"

(3) Whether the amount of Rs. 88,522 received by the assessee as profit realised on the sale of shares and securities is liable to be taxed in his hands ?"

With respect to the question about the sale of gold, this court took the view that it was not clear whether the Income-tax, Appellate Tribunal applied its mind to the statement filed by the assessee showing that the assessee had incurred expenses to the extent to the extent of Rs. 59,90,174 and odd from the 26th October, 1944, to 31st March, 1945. With respect to the sale of Karanpura shares also, this court took the view that it did not appear that the Income-tax Appellate Tribunal applied its mind to the explanation to the assessee as to for what reason the Karanpura shares were purchased and sold and that it considered the material documents adduced by the assessee in support of this explanation. This court, therefore, directed that the Appellate Tribunal should consider the question and reach a clear finding of fact with respect to both the matters. Both the cases therefore, were referred back to the Income-tax Appellate Tribunal to submit to the High Court a clear statement of facts found by it on the above points. The Income-tax Appellate Tribunal accordingly, has drawn up the statement of the case under the above section and has referred the same to the High Court.

The Appellate Tribunal after considering the complete picture of the assessees transactions from 1937 to 1947, came to conclusion that right from the commencement, the assessee had been including in purchase and sale of gold were merely transactions indulged in by the assessee in a scheme of profit making. Mr. P. R. Das, appearing for the assessee, has placed before us the orders of the Appellate Tribunal with respect to the assessment years 1939-40, 1940-41 and 1941-42 in which on a consideration of the sale and purchases of shares and debentures the Appellate Tribunal came to the conclusion that the assessee did not carry on business in securities and the transactions that resulted in the surplus were not transactions of a trade carried on by him, but were merely transactions in the course of change of the investment from one kind to another and the surplus was not, therefore, assessable to income-tax. It was further pointed out that the sale was not in the course of any scheme of profit making, and as the assessee continued to be merely an investor, the assessment of any surplus from the sale was not in the course of any scheme of profit making, and as the assessee continued to be merely an investor, the assessment of any surplus from the sale of the investments would not be right. It has, therefore, been submitted on behalf of the assessee that the order of the Appellate Tribunal in the present case is erroneous and unjustified. The principle of law involved in the above submission is to be found in T. M. M. Sankaralinga Nadar v. commissioner of Income-tax in which it was held that an Income-tax officer, making an enquiry as contemplated by the Income-tax Act, for the purpose of assessing a person, is not a court, and the rule of res judicata applicable to the decisions of civil courts, does not apply to the decisions of the Income-tax Officers nor do the decisions of such officers in assessing the income constitute an estoppel by record against the income-tax officer is not bound by the rule of res judicata or estoppel by record, yet he can reopen the the matter of assessment only if fresh facts come to light, which on investigation, would entitle the officer to come to a conclusion different from that of his predecessor. A Bench of this

court in Raja Bahadur Vishweshwara Singh v. Commissioner of Income-tax has held that the mere fact that in a particular year the assessee was held to be not a dealer in shares and that the profits made by him were not assessed as profits made during subsequent year being treated as dealer in shares and the profits made during a subsequent year being treated as profits from business. There is, therefore, no bar to the Income-tax Officer to come to a different conclusion with respect to the assessee being a dealer even though in the previous years on somewhat similar fact he had been held not to be dealer. Of course, an by his predecessor in the previous year, must have some new materials and facts before him. It has, therefore, to be seen in the present case whether on the facts, and circumstances disclosed before the income-tax officials, the finding of the Appellate Tribunal was justified or not. The Appellate Tribunal has observed that the frequency with which the assessee purchased and sold shares, the interval between the purchase and sale being only a few months in several cases, coupled with the fact that a sum of Rs. 48,00,000 was reserved by the assessee for this activity all pointed to the inference that the assessee was indulging in the business of purchase and sale of shares and securities. It has pointed out that in the present case an additional circumstances, which proved that the assessee was a dealer in shares and not an investor in shares, was the fact that the assessee borrowed nearly 5 Lakhs of rupees on pledge of gold for purchase of shares and securities. Apart from that, the assessee himself admitted in ground no. 4 of the grounds of appeal for the year 1946-47 that the overdraft loan was utilised for the previous years did not have before it a complete picture of the assessees share transactions over a length of time when it passed the orders relied on by the assessee and that the Tribunal had before it in the years in which this questions came up for consideration only a couple of isolated transactions and naturally it gave an impression to it that the assessee was not indulging in purchase and sale of shares as a business activity. Further fresh material in the present case was that when the gold was sold the sale proceeds were again invested by the assessee in the purchase victory bonds worth Rs. 14,11,667 and sold them in March, 1945, only at a short interval, resulting in a profit which indicated that the assessee held them as his stock-in-trade. The Appellate Tribunal therefore, had before it fresh materials for coming to conclusion contrary to one come to by it predecessors in the previous years. The argument in this regard, therefore, fails.

Questions No. 1 - The first questions is common in both the cases, except that the surplus amount received by the sale of gold on which the income-tax has been assessed is different in the two cases. As stated above, between the 9th October 1944, the assessee made a profit of Rs. 13,43,469 and again in October, 1945, of Rs. 33,481 by the sale of gold, and on these two amounts the Income-tax Officer has assessed the assessee to income-tax. In this connection, it may perhaps be prudent to see as to with what intention the assessee had purchased the gold by sale of which he subsequently made the profits referred to above. The case of the assessee is that the international situation with the fall of France in 1940, having worsened, he and his family members became anxious for the safety of their money lying in bank and accordingly, after withdrawing large sum of money from the Imperial Bank of India from the accounts of the assessee and his wife, he purchased gold which was kept in the family values at Patna, the seat of the Raj. This explanation of the assessee did not appeal to the income-tax authorities and the view taken by these authorities gains full support from the conduct of the assessee himself in withdrawing in October, 1941, a sum of Rs. 10,00,000 from the Imperial Bank and depositing the same in the Central Bank of India at Gaya. From the records of the case, it also appears that, even after the purchase of gold kin July, 1940 the assessee had in his hand

cash amounting to several lakhs. The income-tax authorities therefore, rightly took the view that, if the motive for the purchase of gold was preservation of the liquid assets of the assessee by converting them into gold, then he would not have kept in his hand cash amounting to several lakhs or deposited the money in the Central Bank of India of Gaya. The Income-tax Appellate Tribunal has also pointed out that, in fact, there was no panic till 1942 and that panic started only after the Japanese invasion of India in 1943.

So far as the sale of gold is concerned the case of the assessee is that when the victory of England was in sight, he converted the gold, which was lying as unproductive into cash. But this case of the assessee is belied by his own statement in his affidavit dated the 8th March, 1946, . marked as exhibit, V, in which he stated that in the year 1944, the prospects of victory became much brighter and the speedy defeat of the enemy almost as a matter of course, but still the gold was kept unsold. Thus, it does not appear that the assessee sold the gold because the victory was in sigh but as held by the Appellate Tribunal, he sold the same as soon as he saw a tendency of fall in gold prices. The tendency of fall in the price of gold is manifest from the gold rates of the year 1944 as compared to gold rates of the previous years as given at pages 114-116 of the paper book.

The assessees further case with respect to the sale of gold was sold only because of certain pressing necessities. Mr. P. R. Das has taken strong objection to the use of the word "only" and has submitted that it was never the case of the assessee that the gold was sold only for certain pressing necessities though it is true that it was sold for certain pressing necessities. Again this case of the assessee is belied by his own statement in the affidavit dated the 15th October 1946, exhibit V-I in following years went up very high, the gold was not sold and it was not sold and it was only sold owing to pressing necessities in the year 1944 and thereafter. The objection raised by learned counsel in this regard fails on the own statement of the assessee. According to the assessee, the pressing necessities for which he sold the gold were : (1) contributions to the war fund amounting to Rs. 14,00,000; (2) payment of income-tax amounting to several lakhs. (3) advance to Rai Bahadur S. K. Gupta amounting to Rs. 2,70,000 and (4) marriage expenses of his brother amounting to Rs. 5,00,000. The Income tax Appellate Tribunal dealt with only two of these items, namely, the payment of income-tax and the advanced made to Rai Bahadur S. K. Gupta. Even on these points the decision of the Appellate Tribunbal was factually erroneous, inasmuch as, according to it, the amount of income-tax payable by the assessee was only a sum of Rs. 70,403 and, in view of a letter written by Rai Bahadur S. K. Gupta, there was no money due to him in July, 1944. The other two items of necessities were not taken into consideration at all. it was also pointed out at the original hearing that certain statement field by the assessee showing that the Raj had incurred expenses to the extent of Rs. 50,90,174 had not been considered by the Appellate Tribunal. This court, therefore, in its remand order, gave a direction to the Appellate Tribunal to investigate the point and come to a clear finding whether the explanation of the assessee was right and whether he had pressing necessities to the extent of about Rs. 50,00,000 during the period in question. Mr. P. R. Das has pressed an argument that even after the remand order, the statement furnished by the Appellate Tribunal does not show that the directions given by this court were carried out. I, however, do not find any substance in this argument. The statement submitted by the Appellate Tribunal shows that it has considered all four items of necessities as well as the statement filed by the assessee, referred to above. With respect to the contributions to war fund, the finding of the Appellate Tribunal is that

there was no necessity for the sale of gold for purchasing the victory bonds, inasmuch as immediately after their purchase those bonds were sold with profit. So far as the payment of income tax is concerned, it has held that the assessee was required to pay a sum of Rs,. 5,19,286-5-0 as income-tax. It also found that the assessee had to pay Rs. 2,70,000 to Rai Bahadur S. K. Gupta and had to spend over the marriage expenses of his brothers a sum of Rs. 4,05,000. Thereafter the Income-tax Appellate Tribunals considered the statement filed by the assessee and held that, after eliminating the purchase and sale of victory bonds, large amounts bonds, large amounts of money were deposited in various banks aggregating to Rs. 20,97,237 out of the sale proceeds of gold and the balance Rs. 15,82,937-6-3 was spent on various accounts, including the three items, namely, payment of income-tax, marriage expenses and payment to Rai Bahadur S. K. Gupta for which the assessee stated that he had pressing necessity. On merits as regards the statement, however, the Appellate Tribunal could not be able to verify its correctness as the cash book for the relevant period was not produced before it. The argument of learned counsel for the assessee that the directions given in the remand order were not carried out is, therefore, of no substance.

It was also contended on behalf of the assessee, that while determining the amount of income-tax payable by the assessee, the Appellate Tribunal has committed an error of record, inasmuch as it has not considered several other item which, according to the Income-tax Officer, were also payable by the assessee during the period in question. It appears from the assessment order of the Income-tax Officer that the following payments of income tax were made by the assessee, namely,

(i) Rs. 1,99,134-7-4 on the 15th December, 1944;

(ii) Rs. 1,99,134-7-0 on the 31st March, 1945, and

(iii) Rs. 5,19,285-1-0 on the 29th March, 1945.

It is urged that the Appellate Tribunal had taken into consideration only the last item and has omitted to consider the first two. The total of all these three item comes to Rs. 9,17,554-9-4. In this connection our attention has been drawn by Mr. Bahadur, standing counsel for the income-tax department, to the fact that at the original hearing also an argument on behalf of the assessee was advanced on the footing that the amount of income-tax payable by the assessee was about Rs. 5 lakhs only which is clear from the remand order itself. The remand order does clearly show that a direction was given to the Appellate Tribunal only with respect to a sum of Rs. 5 lakhs only which is clear from the remand order itself. The remand order does clearly show that a direction was given to the Appellate Tribunal only with respect to a sum of Rs. 5,00,000 so far as the income-tax payable was concerned. The Appellate Tribunal, therefore was perfectly justified in taking this figure to be the amount of income tax payable by the assessee in the statement of case submitted by it to this court.

The question whether or not the gold was sold only for the pressing necessities of the assessee is a question of fact, and it is a too well established principle of law that this court in a reference under section 66 of the Income-tax Act will not interfere with a finding of fact arrived at by the Tribunal if it is based on a view which is reasonable, and probable even though this court, on a consideration of

the evidence, may reach to be different conclusion.

It was pointed out in a Bench decision of this court in Raja Bahadur Vishweshwara Singh v. Commissioner of Income-tax that if the Appellate tribunal has come to a finding upon the evidence and the facts and circumstances of the case that the assessee was a dealer in shares and that the purchase and sales of shares made by him were done in the course of his business in dealing in shares and the profits made by him thereby during a particular period are assessable as profits from business, the High Court cannot sit in appeal over the decision of the Tribunal, but can only consider whether there was no evidence or material upon which the Tribunal could have come to such a finding. In that case, the assessee had borrowed Rs. 10,00,000 from his brother for the purchase of shares, he had an office managed by experts in dealing in the share market, shares to the value of Rs. 44.48 lakhs had been purchased and 90 percent of these shares had been sold. Relying on these facts, the Income-tax Appellate Tribunal agreed with the finding of the Income-tax Officer that the assessee was a dealer in shares and securities during the period in question and the profits in questions were assessable to income-tax as profits from business. On reference to the High Court, it was held that, there was sufficient to support the finding of the Tribunal and the High Court was not entitled to sit in appeal and reconsider the evidence.

In Behari Lal Jhandu Mal, In re, 2, the assessee, carrying on a money lending business, purchased in 1931, when England went off the gold standard 1,600 tolas of gold and paid the purchase price of Rs. 35,050 in two instalments of Rs. 177,525 each, by withdrawing money from fixed deposits before their maturity and from a; firm in which it was a partner and also by borrowing from another firm. In 1936, the assessee sold onefourth of the gold for rs. 13,800 and thus made a profit of Rs. 5,037 which was assessed by the Income-tax authorities as profits from business. It was held by the High court that there was material before the income-tax authorities to come to the finding that the purchase and sale of gold by the assessee was an adventure in the nature of trade, profits from which were liable to income-tax. In Dalmia Jain & Co, Ltd. v. Commissioner of Income-tax 3 also it was pointed out that, if the finding of fact reached by the Appellate Tribunal could not be said to be based upon no material, the court had no jurisdiction to interfere with that finding. It was also held in that case that, when the Tribunal has reached a conclusion on an appreciation of a number of facts, the soundness of the conclusion must be determined, not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting in the picture as a whole.

In the present case, as already observed, the Tribunal took into consideration each and every item of the pressing necessities for which the gold was alleged to have been sold by the assessee with reference to the evidence on record and the conduct of the assessee in selling the gold at a time when its price showed a tendency of going down, and therefore, the conclusion reached by the Tribunal cannot be said to be based on no material On the basis of the decisions referred to above, therefore, this court cannot interfere with the finding of the Tribunal on the question referred to above. Question No. 1 - therefore, in both the cases must be answered in the affirmative in favour of the department and against the assessee.

Question No. 2 - The question which is common to both the cases relates to the assessment in respect of the amount of rent for houses. The income-tax authorities held to be taxable and their decision was affirmed by the Income-tax Appellate Tribunal. No argument has been advanced on behalf of the assessee before us in respect of the said question doubting the correctness of the decision of the Appellate Tribunal. This question, therefore, should also be answered in the affirmative in favour of the department and against the assessee.

Questions No. 3 - This question, relating to the sale of Karanpura shares, arises only in M.J.C. No. 346 of 1954. The assessee purchased, 7,025 Karanpura shares of Rs. 2,37,267 and during the accounting period 1945-46 he sold 6,950 shares for Rs. 3,28,085. The cost of 6,950 shares came to Rs. 2,34,563. Hence, there was a profit of Rs. 93,522. Deducting a sum of Rs. 5,000 as being interest on bank overdraft and other incidental expenses, the assessee was assessed on profit amounting to Rs. 88,522. The case of the assessee is that the purchase of Karanpura shares was made in order to get control over the company and the sale of these shares took place because of the failure of the negotiation for compromise in certain civil suits. It appears that there were certain disputes in courts of law between the assessee and the Karanpura Development company Ltd. in which the assessee demanded a large amount of money from the latter with regard to the title to collieries said to have been leased out to it. The assessee was advised that he should obtain as much 51% of the votes in the Karanpura Development Company by acquiring the same by compromise with the directors of the company. It was also pointed out to the assessee that, even if the compromise would fail, he would not stand to lose any money invested inasmuch as the shares could be sold and the assessee could recover the purchase price. The Appellate Tribunal, considering the above facts with reference to a certain letter dated the 4th of January, 1945, a copy of which is incorporated in the paper book at page 104, held that the assessee was attempting to obtain control of the company not by the purchase of shares in the market but by the company in order to settle the disputes between the said company and the assessee; and it came to the conclusion that, in the circumstances of the case, the purchase of the shares in Karanpura Development company was not in pursuance of an intention to obtain control over the said company by acquiring 51% of the votes in respect of the said company. The decision bwith respect to this point also is a decision on a question of fact which cannot be said to be based on no material and for the reasons given above while dealing with questions no. 1, this court has no jurisdiction to interfere with such finding of fact. This question, therefore, also is answered in the affirmative in favour of the department and against the assessee.

Mr. P. R. Das, appearing for the assessee, has relied on two supreme court cases, Ramnarain Sons (Pr.) Ltd. v. Commissioner of Income-tax and Kishan Prasad and Co. Ltd. v. Commissioner of Income tax. In the first case the ssessee company, in order to acquire the managing agency of a textile mill, purchased from the managing agents, 1,507 shares of the mill at Rs. 2,321-8-0 per share at a time when the market price of the shares was Rs. 1,610. The remaining 1,000 shares of the mill held by the managing agents were acquired by the directors of the assessee company. Two months thereafter, the assessee company sold 400 of those shares at a loss of Rs. 1,78,438 and this loss was claimed by the assessee as a trading loss. It was held that the loss incurred by the sale of 400 shares was loss of a capital nature, inasmuch as by purchasing the shares far in excess of their market price to facilitate acquisition of the managing agency a capital asset was acquired by the assessee, and the intention in purchasing the shares was not to acquire by the assessee, and the intention in

purchasing the shares was not to acquire them as part of the stock-in-trade of its business in shares.

Thus decision in that case was based on the ground that the shares were purchased far in excess of their market price to facilitate acquisition of the managing agency. In the second case, the managing director of the assessee company entered into an agreement in 1933 with a sugar syndicate then incorporated under which in lieu of the assessee subscribing for shares worth Rs. 3. 00,000 in the sugar syndicate and undertaking to sell shares of the syndicate worth Rs. 2,00,000 the assessee was to be given the managing agency of a mill of the sugar syndicate when such mill was erected. There was a further agreement that, if the mill was not erected, the assessee was to be paid a commission on the share invested by them. accordingly, the managing director was appointed a director of the syndicate when such mill was erected. There was a further agreement that, if the mill was not erected the assessee was to be paid a commission on the shares invested by them. Accordingly the managing director was appointed a director of the syndicate. The mill was, however, not erected and the agreement about acquiring the managing agency fell through. That managing director died in 1949. and the assessee sold the shares in the syndicate in 1941 and 1943. The sale brought an amount to the assessee which was in excess of what they had paid for the shares by about Rs. 2,00,000. It was held that the purchase of shares to the tune of Rs. 3,00,000 was in investment and not an adventure and the sum of Rs. 2,00,000 received by the assessee was not in the nature of income from business and was, therefore, not liable to tax. The material facts of these two cases were different from those of the present one, and they have no application to the facts of the present case.

The result, therefore, is that all the questions in the two cases referred to this court, as stated above, are answered in the affirmative in favour of the department and against the assessee. The assessee must pay the costs to the department. Hearing fee a consolidated amount of Rs. 250 in both the cases.

RAMASWAMI C.J. - I agree.

Reference answered accordingly.