

Mumbai ITAT Judgement — Minimising Tax Liabilities through Lawful Means is not Illegal

Michael E Desa Vs ITO

ITA No. 4286/Mum/17

On Appeal, the issue placed before ITAT by the assessee was as to whether minimising tax liabilities through lawful means is not illegal?

ITAT decided the appeal in favour of the assessee with following observation:

1. The Assessing Officer has primarily questioned the timing of booking the loss and selling these shares, which, even according to the Assessing Officer, are “worthless”. AO should not take a call on how the assessee should organise his fiscal affairs so as to serve the interests of revenue authorities.
2. Instant transactions may be tax motivated but that factor did not, by itself, render the transaction a sham transaction or a colourable device so as to be.
3. Not tax planning simpliciter but tax planning through dubious methods or colourable devices had been deprecated by courts.
4. Tax planning may be legitimate provided it was within the framework of law.
5. In the case of Vodafone International Holdings BV Vs Union of India [(2012) 341 ITR 1 (SC)], Their Lordships have reiterated the principle that “every tax payer is entitled to arrange his affairs so that his taxes shall be as low as possible and that he is not bound to choose that pattern which will replenish the treasury”.

6. It was a commercial decision of Saldhana to buy the shares on a token consideration, almost the same amount as its net effective worth and book value.

7. Proposition that impugned transaction was illegal under section 23 and 24 of Contract Act proceeded on fallacious assumption that minimising tax liabilities through lawful means, even if sale of shares be treated as tax-motivated, was illegal.

8. When a contract's object was illegality or something which would frustrate law, such contract was void but minimisation of tax liability, as long as it was through legitimate tax planning and without using colourable devices, was not at all illegal;

9. It is not even immoral as it was everybody's duty to himself to manage his affairs properly within the framework of law.

10. Benefit of LTCG could not be declined to the assessee only on ground that if the assessee had not taken proactive measures, i.e., sale of shares, he would have paid more taxes.

11. Just as tax evasion through colourable devices and tax shelters could not be legitimised and glorified, genuine tax planning within the framework of law could not be deprecated and disapproved.

12. Line of demarcation between what was permissible tax planning and what turned into impermissible tax avoidance may be somewhat thin but that could not be an excuse enough for tax authorities to err on the side of excessive caution.

13. Thus, AO was directed to allow set-off of long-term capital loss on sale of shares in VCAM against LTCG on sale of property.

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