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IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE ACTING CHIEF JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.21210 of 2022
(CNR No.HBHC010287632022)

DATE : 13.10.2026

Reserved on : 06.08.2026 **Pronounced on : 13.10.2026**

Uploaded on : 15.10.2026

Between:
M/s. EKGE RETAIL LLP.

…Petitioner

AND

Assistant Commissioner of Income-Tax,
Central Circle – 3(4), Aaykar Bhawan,
Opp. LB Stadium, Basheer Bagh,
Hyderabad – 500 004 and 3 others.

…Respondents

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

Heard Mr. Lakshmikumaran Sridharan, learned Senior Counsel appearing for the petitioner; and Ms. B. Sapna Reddy, learned Senior

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Standing Counsel for the Income Tax Department appearing for the respondents.

2. The instant Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the order passed by respondent No.3, dated 23.02.2022, for the assessment year 2018-19 under Section 144BA(6) of the Income Tax Act, 1961 (for short, 'the Act').

3. *Vide* the impugned order, respondent No.3 held that the sale-purchase transactions of the shares resulted in short-term capital loss which was set off with the long-term capital gain from slump sale which is an impermissible avoidance agreement under the General Anti-Avoidance Rule Provisions (for short, 'GAAR').

4. The facts of the case are that New Meena Bazar International Pvt. Ltd. was a company incorporated on 01.02.2006, engaged in the manufacture, sale, distribution and trading of apparel and accessories for men, women and children, marketing ethnic and formal wear under the brand name "Mebaz", and counted among the largest fashion brands in southern India. As on 31.03.2017, the company operated 20 retail stores across the country, with an annual gross

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turnover of Rs.144 crores. Vedant Fashions Pvt. Ltd. was, at the relevant time, engaged in the men's Indian wedding and celebration wear segment. In or around May 2017, Vedant Fashions approached New Meena Bazar with a proposal to purchase the business run under the "Mebaz" brand, with a view to augmenting its own market presence. Pursuant to discussions and negotiations between the parties, on 13.06.2017, New Meena Bazar sold its business as a going concern to Vedant Fashions for a total consideration of Rs.2,10,46,21,110/-, the terms whereof were recorded in a Business Transfer Agreement of even date, leave being sought to refer to the same when produced.

5. New Meena Bazar International (P) Ltd. was amalgamated into M/s. Madevsag Retail Pvt Ltd (for short "Madevsag Retail") *vide* an order of the NCLT, Hyderabad, dated 18.06.2018. The appointed date of amalgamation was fixed as 01.04.2017. As the effective date of amalgamation preceded the date of transfer of undertaking by New Meena Bazar, the transfer was deemed to have been effected by Madevsag Retail. Subsequently, Madevsag Retail merged into EKGE Retail Private Limited, *vide* order dated 24.12.2018 passed by the

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NCLT, Hyderabad, with the amalgamation being effective from 01.04.2018.

6. Madevsag Retail, the petitioner herein, being the successor in business to New Meena Bazar, had nurtured the said business for over 20 years and expansion thereof to the next stage required significant investment and managerial skill. While the petitioner was contemplating avenues for such expansion, it came to learnt that Vedant Fashions was likewise on the lookout for expansion of its garment and apparel business, Vedant Fashions already having the brand "Manyavar" catering to Indian men's celebration wear, with stores across India, and having recently ventured into Indian women's celebration wear under the brand "Mohey". Vedant Fashions accordingly offered to buy out the petitioner's business and integrate it with its own, an integration the petitioner believed to be in the mutual interest of both parties, and upon negotiations, the consideration for the transfer came to be determined at Rs.2,10,46,21,110/-. Incidentally, though not material to the present case, the petitioner presently functions as a franchisee operating retail outlets for Vedant Fashions, for a commission of approximately 18% linked to sales made from such outlets.

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7. After discharging liabilities to the extent of Rs.59.40 crores out of the total consideration of Rs.210.46 crores, the petitioner was left with a surplus of Rs.151.06 crores, for which it had no immediate or long-term requirement. Excluding the last tranche of approximately Rs.20 crores, which was received 1 year after the transfer of the undertaking, a surplus of Rs.130 crores was thus available with the petitioner for investment. Neither the petitioner nor its promoters had, at any earlier point, had access to an investable surplus of such magnitude, and various options for deployment of these funds came to be considered. Over a period of time, the petitioner was approached by numerous wealth managers offering their services to plan investment of the surplus of Rs.150 crores, including representatives of almost all leading financial institutions in the country, among them ICICI, HDFC, IIFL, Anand Rathi and Kotak.

8. Having no prior experience in dealing with investment managers, the petitioner additionally engaged an internal consultant to advise it on the various options available. Pending evaluation and a final decision on the deployment of its funds, the petitioner invested the entire surplus in liquid mutual funds, such funds yielding a marginally higher rate of return than bank fixed deposits while being

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regarded as highly safe and, unlike fixed deposits, readily withdrawable.

9. The advice received from the various quarters ranged from investing the entire surplus in shares of listed companies to placing the whole of it in bank fixed deposits. Upon its interactions with the wealth managers and its consultants, the petitioner decided to diversify its investments across asset classes and finally resolved that the sum of Rs.130 crores would, by March, 2018 be invested in the following manner: one-third, being approximately Rs.50 crores, in equities / shares of listed companies; and two-thirds, being approximately Rs.80 crores, in bonds and units of debt mutual funds.

10. The petitioner was advised and it was explained to it that going by the historical market trends, the purchase of shares pre-bonus and their sale immediately upon allotment of bonus shares could yield a short-term additional return of 1% to 3% even within a period of a week or two. By way of illustration, if the shares of a company such as Mahindra & Mahindra Ltd. traded at Rs.1,000/- prior to declaration of a bonus, and the bonus was allotted in the ratio of 1:1, the price ought theoretically to fall to Rs.500/- after issue of the bonus shares.

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In practice, however, it was believed that the price would not fall to Rs.500/- but would trade at Rs.501/- or above, such arbitrage yielding a sound short-term return with little or no additional risk. On the said illustration, an ex-bonus price of Rs.501/- would, even within a two-week period, yield a return of approximately 2%, translating on an annualised basis to a very significant return of about 50%.

11. With a view to achieve the aforesaid objective, together with the possibility of earning such short-term returns on equity, the petitioner invested an aggregate of Rs.106.31 crores in the pre-bonus shares of a number of large listed companies from time to time, sold shares worth Rs.57.24 crores post-bonus, and was left with a net investment, at cost, of Rs.49.07 crores. As the transfer of the business had been effected as a going concern for a lump sum consideration, gains arising therefrom were computed under Section 50B of the Act. As required under the said provision, the net worth of the undertaking, being the value of its assets minus its liabilities, was determined at Rs.33,70,26,715/-; the business undertaking having been held by New Meena Bazar for more than thirty-six months, the long-term capital gains on the transfer were worked out at

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Rs.1,75,91,50,508/-, taxable in the hands of New Meena Bazar at 20% plus applicable surcharge and cess.

12. It is the case of the petitioner that the short-term capital loss of Rs.49,32,71,673/- could be, and was liable to be, set off against the long-term capital gains arising to it on the slump sale, in terms of Section 70(2) of the Act.

13. The petitioner had, as noticed above, invested its corpus funds in liquid mutual funds pending their actual deployment, and during the financial year 2017-18 earned a sum of Rs.2,09,27,881/- from such investment, taxable as short-term capital gains at the rate of 25%.

14. For the assessment year 2018-19, corresponding to the financial year 2017-18, the petitioner filed its return of income on 29.09.2018, declaring a total income of Rs.1,23,81,04,840/-, leave being sought to refer to the return of income, the audited financial statements, and the tax audit report in Form 3CD, when produced.

15. On 27.11.2018, search and seizure operation was carried out at the premises of the petitioner by the Income Tax Department, which

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concluded on 28.11.2018. No incriminating material, however, was found by the search party in the course of the said operation, and although the statement of the Director of the petitioner came to be recorded, nothing that could be termed incriminating material was found during the search.

16. Pursuant to the said search and seizure operation, the Revenue Authorities reopened approximately 105 assessments of the petitioner's group, of which 104 came to be completed with nil or minimal adjustment to the returned income, the assessment of the petitioner herein alone remaining pending.

17. Notwithstanding the search conducted on the petitioner, its return for the assessment year 2018-19 was picked up for scrutiny *vide* notice dated 21.09.2019 issued under Section 143(2) of the Act, whereby the petitioner was informed that its case had been selected to verify certain issues relating to "Capital Gains / Loss, Depreciation Claim, Expenses Incurred for Earning Exempt Income, Disallowance under Section 40A(7) (Gratuity provision) and Business Expenses", leave being sought to refer to the said notice when produced. Subsequently, after a lapse of about 14 months from the date of the

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search operation, a notice dated 22.01.2020 came to be issued under Section 153A of the Act by respondent No.1, requiring the petitioner to file its return of income for the assessment year 2018-19, leave being sought to refer to the said notice when produced. Upon receipt of the said notice, the petitioner intimated its jurisdictional Assessing Officer, who had issued the notice under Section 143(2) that its assessments for the assessment years 2013-14 to 2018-19 had been centralised pursuant to the search operation, *vide* notice issued under Section 153A of the Act. In compliance with the notice dated 22.01.2020, the petitioner filed its return of income on 20.02.2020, without any change in the claims made in its original return, leave being sought to refer to the said letter when produced. Thereafter, *vide* notice dated 05.04.2021 issued under Section 142(1) of the Act, respondent No.1 called upon the petitioner to show cause as to why the provisions of the GAAR ought not to be invoked in relation to the transactions in bonus shares resulting in short-term capital loss, said to have been undertaken to offset the capital gains arising from the slump sale.

18. The petitioner filed its objections to the invocation of GAAR *vide* submission dated 20.04.2021. Respondent No.1, however,

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proceeded to make a reference to respondent No.2 under Section 144BA(2) of the Act. Respondent No.2 thereafter issued a show cause notice to the petitioner as to why the provisions of GAAR ought not to be invoked in relation to the transactions in bonus shares resulting in short-term capital loss set off against the capital gains arising from the slump sale, effectively invoking Sections 96(1)(b) and 96(1)(d) of the Act, and further alleging that the main purpose of the arrangement was to obtain a tax benefit. Not being satisfied with the objections filed by the petitioner, respondent No.2 made a reference to the respondent No.3 under Section 144BA(4) of the Act, *vide* Form 3CEI. Respondent No.3 thereupon passed directions dated 23.02.2022 under Section 144BA(6) of the Act holding that the sale-purchase transactions in shares resulting in the short-term capital loss, set off against the long-term capital gains arising from the slump sale, constituted an impermissible avoidance arrangement under the GAAR provisions, and accordingly that the impugned transactions in purchase and sale of equity shares carried out by the petitioner in the year under consideration, resulting in a short-term capital loss with a view to setting off the same against the long-term capital gains on the

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slump sale, amounted to an impermissible avoidance arrangement under the said provisions.

19. It is the case of the petitioner that the impugned order was plainly erroneous, vitiated by an error apparent on the record and perverse in the legal sense of the term, and was accordingly liable to be set aside in exercise of the writ jurisdiction of this Hon'ble Court. Inasmuch as Section 144BA(14) of the Act expressly stipulates that no appeal shall lie under the Act against the directions of the Panel, and clauses (i) and (ii) thereof render such directions binding upon the assessee as well as upon the Commissioner and the Income Tax Authority, the petitioner was left with no other alternative efficacious remedy save to challenge the impugned order dated 23.02.2022 passed by respondent No.3 before this Hon'ble Court by way of the instant Writ Petition invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

20. Learned Senior Counsel appearing for the petitioner submitted that there is no tax benefit in the transactions effected by the petitioner. The impugned order completely ignores and overlooks the plain mandate of Section 70(2)(i) of the Act. As explained elsewhere,

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Section 70(2)(i) implements a fundamental and essential feature of income tax law. Income tax is a single tax and not aggregate of different taxes. It is an annual tax and is concerned with the affairs of the tax payer for the year taken as a whole. It is tax on income of the person for the year and that can be arrived at only after set off loses from some activities with income from others and that the conclusion in the impugned order that there is a 'tax benefit' is plainly incorrect.

21. Learned Senior Counsel appearing for the petitioner further contended that the purchase only of those shares for which bonus issue has been announced and sale of quantity of shares equal to the number of original shares is not an "arrangement". In the present facts, the petitioner has purchased and sold shares of large and reputed publicly listed companies through recognized stock exchange at open market rate at arm's length in a transparent manner. The price of the stock in questions was based entirely on market improbable. When transacting through the stock exchange, the other entity with whom purchase and sale transactions are entered into cannot be identified. The profits or losses arising in transacting in the stock exchange are always determined based on the price of the stock prevailing in the exchange, which in turn is driven by various factors.

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Thus, the precise and exact quantum of profit and loss is not pre-ordained. Hence, it is not an arrangement, as per Section 102(1) of the Act.

22. Learned Counsel appearing for the petitioner also contended that the main purpose is not to obtain "tax benefit". Section 96(1) of the Act defines "impermissible avoidance arrangement" to the effect that the main purpose of an arrangement is to obtain a tax benefit, the detailed facts presented by the petitioner establishes the position that tax benefit is not the main purpose of the alleged arrangement. The definition of "arrangement" as per Section 102(1) of the Act is not fulfilled for another reason. According to the impugned order, the present case falls within the terms "operation" and "scheme" employed in the definition of "arrangement" contained in Section 102(1) of the Act, which is incorrect and imply that there has to be more than one identifiable person(s) / entity(s) involved in an arrangement.

23. Learned Senior Counsel appearing for the petitioner argued that neither purchase nor sale of shares of listed companies through recognised stock exchange in open and transparent manner can be

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governed by Section 96(1)(d) of the Act. The purchase-sale transaction has been carried out by the petitioner on a recognised stock exchange. The stock exchange is well regulated by the Stock Exchange Board of India. It has paid the securities transaction tax and the applicable service tax *qua* the same and that there is no better alternative to undertake a *bona-fide* transaction. Also, a huge volume of transactions are undertaken through such stock exchanges on a daily basis. It is one of the most legitimate and routinely employed manner of undertaking transactions in securities. It was in this context argued that Clause(d) applies when arrangement is entered into by means not ordinarily employed for *bona-fide* purpose. Clause(d) also applies when arrangement is carried out in a manner which is not ordinarily employed for *bona-fide* purpose.

24. *Au contraire*, learned Senior Standing Counsel for the Income Tax Department submitted that during the course of the proceedings under Section 153A of the Act, for the assessment year 2018-19 in assessee's case, the Assessing Officer having regard to the material and evidence available considered that it is necessary to declare an impermissible avoidance arrangement and to determine the consequences of such an arrangement within the meaning of Chapter-

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XA of the Act. Accordingly, the Assessing Officer issued show-cause notice to the assessee under sub-rule(1) of Rule 10UB on 05.04.2021 calling for objections.

25. Learned Senior Standing Counsel for the Income Tax Department further submitted that on receipt of reference from the Assessing Officer, the PCIT issued a notice under Section 144BA(2) of the Act to the assessee on 24.5.2021 calling for objections of the assessee. After considering the objections, the Pr.CIT(Central), Hyderabad made a reference under Section 144BA(4) of the Act, to the approving panel of GAAR to issue directions declaring the arrangement as an impermissible avoidance arrangement as laid down in Chapter-XA of the Act. Thereafter, the approving panel after considering the submissions of the assessee and the Department, passed directions under Section 144BA(6) of the Act with a direction to the Assessing Officer to regard the impugned transactions as an impermissible avoidance arrangement under Chapter X-A of the Act.

26. Learned Senior Standing Counsel for the Income Tax Department further contended that the assessee planned the entire transaction in such a way that various provisions of the Act such as

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Section 55(a)(iiia) that requires the cost of acquisition of the bonus shares to be taken as zero, and the CBDT Circular No.704, dated 28.04.1995, requiring the adoption of FIFO method to account for securities acquired in several lots at different points of time, work in tandem and give the result of short term capital loss. Hence, it can be said that the 'purpose test' has been satisfied. The given situation of incurring short term capital losses and further setting them off with the long-term capital gains is clearly not for the *bona-fide* purposes.

27. Learned Senior Standing Counsel for the Income Tax Department further contended that incurring short term capital losses and further setting them off with the long-term capital gains is not for the *bona-fide* purposes and also with view to gain tax benefit by abuse of the provisions of the Act, which is why the provisions of GAAR are applicable.

28. Having heard the contentions put forth on either side and on perusal of records, the question that falls for consideration is, "whether the purchase of shares of large listed companies on a recognised stock exchange prior to the declaration of bonus, and the sale of an equivalent quantity of shares after allotment of the bonus

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resulting in a short-term capital loss which came to be set off against long-term capital gains arising from a slump sale under Section 70(2) of the Act, constitutes an 'arrangement' within the meaning of Section 102(1) of the Act, and, if so, whether the same can be declared an 'impermissible avoidance arrangement" under Section 96(1) read with clauses (b) and (d) thereof, so as to attract the consequences prescribed under Chapter X-A of the Act?"

29. The scheme of Chapter X-A of the Act introduced w.e.f. 01.04.2018 is one of the considerable rigour and for that very reason its conditions must be construed strictly. Section 96(1) of the Act declares an arrangement to be an impermissible avoidance arrangement only where two conditions are cumulatively satisfied: firstly, that the main purpose of the arrangement is to obtain a tax benefit; and secondly, that the arrangement additionally answers any one of the four descriptions in clauses (a) to (d). The threshold requirement, preceding both limbs, is that there must exist an "arrangement" as defined in Section 102(1). The burden of establishing each of these ingredients rests upon the Revenue, for Chapter X-A of the Act, visits the assessee with consequences of the gravest kind, including disregard or re-characterisation of transactions

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and denial of treaty benefits, none of which can follow upon a mere suspicion or upon the Revenue's disapproval of the commercial course an assessee has chosen to adopt.

30. Section 102(1) of the Act defines "arrangement" to mean any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding. Respondent No.3, in the impugned directions, has proceeded on the footing that the petitioner's dealings fall within the expressions "operation" and "scheme" occurring in this definition. We find considerable force in the submission of learned Senior Counsel for the petitioner that this conclusion cannot be sustained on the admitted facts.

31. It is not in dispute that the petitioner purchased and sold shares of large and reputed publicly listed companies on a recognised stock exchange at prevailing open market rates in transactions that were entirely at arm's length and wholly transparent. On a recognised exchange, the counterparty to any given trade is neither known nor capable of being identified by the transacting party; the price at which

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a transaction is concluded is determined by the market and by the multitude of factors that drive it and not by any concert between identifiable persons.

32. The words “transaction”, “operation”, “scheme”, “agreement or understanding” employed in Section 102(1) of the Act must be read in their setting, and each of those expressions read in the company of the others, connotes a degree of concert, design or arrangement between identifiable parties, or at the very least a pre-ordained set of steps whose outcome is within the control of the person said to have entered into it. Whereas here, the quantum of gain or loss is not and cannot be pre-ordained, being wholly dependent upon the movement of market prices over which the petitioner exercised no control whatsoever, it is difficult to characterise the petitioner’s trade as an “operation” or “scheme” within the meaning of the definition. That the petitioner’s expectation of a favourable price movement post-bonus happened to be borne out in some instances and evidently not in others is a consequence of market behaviour and not of any design of the petitioner's making.

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33. We may add that the very manner in which the transactions were carried out militates against the finding recorded by respondent No.3. The petitioner transacted on a stock exchange regulated by the Securities and Exchange Board of India, discharged Securities Transaction Tax and the applicable Service Tax on those transactions and did so through the most conventional and routinely employed channel available for dealing in securities. There is, quite simply, no more legitimate or transparent mode by which an investor could have deployed surplus funds in the equity market. Even assuming, for argument's sake, that the petitioner's dealings could be brought within the expansive definition of "arrangement", Section 96(1) requires the Revenue to establish that the **main purpose** of that arrangement was to obtain a tax benefit. The statute uses the words "main purpose", not "a purpose" or "an incidental consequence". That an assessee, having incurred a loss, thereafter claims the set-off which the statute itself expressly permits, cannot by itself convert the earning of that loss into an exercise whose main purpose was the obtaining of a tax benefit.

34. The record before us discloses a commercial narrative that respondent No.3 has left substantially unaddressed. The petitioner

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came into possession of an investable surplus of approximately Rs.130 crores upon the sale of its business as a going concern, a surplus of a magnitude neither it nor its promoters had previously handled. It engaged with representatives of virtually every leading financial institution in the country, including ICICI, HDFC, IIFL, Anand Rathi and Kotak, and additionally retained an internal consultant to advise upon the deployment of these funds. Pending a final decision, the surplus was parked in liquid mutual funds, being instruments that are safe and readily redeemable. Ultimately, a considered allocation was arrived at, namely one-third of the corpus into listed equities and two-thirds into bonds and debt mutual funds. The purchase of pre-bonus shares was undertaken as part of the equity allocation so determined, upon advice that historical market trends indicated the possibility of a short-term arbitrage return of 1 – 3 %, which on an annualised basis would be very substantial. Of the aggregate of Rs.106.31 crores so invested, shares worth Rs.57.24 crores were sold post-bonus, and the petitioner retained a net investment at cost of Rs.49.07 crores, which it continued to hold. That retention is itself telling; an assessee whose sole object was the

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manufacture of a capital loss would have had no reason to remain invested to that extent in the underlying scrip.

35. Respondent No.3, in our view, has approached the question from the wrong end. Instead of asking whether the material established that the dominant purpose of the petitioner's investment decisions was the obtaining of a tax benefit, the impugned directions proceed from the premise that because a tax benefit resulted, the purpose must have been to obtain it. That is to reason backwards from effect to intention and it is not the enquiry that Section 96(1) mandates. It is well settled that an assessee is entitled to so arrange its affairs as to attract the least incidence of tax, provided it does so within the four corners of the law, and that the mere circumstance that a lawful course adopted by an assessee also happens to be tax-efficient does not render that course impermissible.

36. We find merit in the fundamental submission of the learned Senior Counsel for the petitioner that the impugned directions overlook the plain mandate of Section 70(2) of the Act. Income tax is a single, unified and annual levy. It is not an aggregate of discrete taxes upon discrete receipts. The total income of an assessee for a

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previous year can be arrived at only after the losses sustained in some activities are set off against the gains derived from others; that is not a concession granted to the assessee but an intrinsic feature of the manner in which taxable income is computed under the Act. Section 70(2) gives statutory expression to this very principle by, permitting a short-term capital loss to be set off against capital gains, whether short-term or long-term, arising in the same year. Section 74 carries the same principle forward to subsequent years.

37. When, therefore, the petitioner set off a short-term capital loss of Rs.49,32,71,673/- against the long-term capital gains of Rs.1,75,91,50,508/- computed under Section 50B on the slump sale, it did no more than compute its total income in the manner that the Act itself prescribes. To describe the working out of a computation provision according to its own terms as the obtaining of a "tax benefit" is to misapprehend the nature of the levy. A "tax benefit" within the contemplation of Chapter X-A must be something that the assessee secures by circumventing or subverting the scheme of the Act and not something that flows from the direct and unavoidable operation of a computation provision upon a loss that was genuinely and commercially sustained.

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38. Clause (d) of Section 96(1) applies where the arrangement is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes. The clause is directed at the means and the manner, not at the outcome. Tested on that touchstone, the petitioner's transactions cannot possibly attract the clause. Purchases and sales of listed securities on a recognised stock exchange regulated by the Securities and Exchange Board of India, with securities transaction tax and service tax duly discharged, represent the most ordinary, conventional and universally employed means of transacting in securities in this country. Transactions of enormous aggregate volume are executed through this very channel every trading day. There is no means more ordinary and no manner more *bona-fide* available to an investor wishing to deal in equities. To hold that recourse to a regulated stock exchange is a means not ordinarily employed for *bona-fide* purposes would be to stand the clause upon its head.

39. For much the same reasons, clause (b) of Section 96(1) which speaks of an arrangement that results directly or indirectly in the misuse or abuse of the provisions of the Act is not attracted. There has been no misuse and no abuse. The petitioner invoked Section

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70(2) according to its terms, computed the cost of bonus shares as the statute commanded under Section 55, applied the First-In-First-Out method as the Board's Circular required, and computed its slump sale gains under Section 50B. Abuse connotes the employment of a provision for a purpose alien to that for which it was enacted. Set-off under Section 70(2) exists precisely so that losses may be set against gains in arriving at total income, and the petitioner used it for no other purpose.

40. We are also unable to overlook two features of the record that the impugned Directions leave unexplained. The search and seizure operation conducted on 27.11.2018 and 28.11.2018 yielded no incriminating material whatsoever against the petitioner, and although the statement of its Director came to be recorded, nothing that could be described as incriminating emerged. Further, of the approximately 105 assessments of the petitioner's group reopened in consequence of that search, 104 came to be completed with nil or minimal adjustment to the returned income. Against this backdrop, the singling out of the present assessment for the invocation of the extraordinary machinery of Chapter X-A required, at the very least, a careful and reasoned

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demonstration of each ingredient of Section 96(1) and such a demonstration is conspicuously absent from the impugned Directions.

41. In light of the foregoing, we are of the considered view that the Revenue has failed to establish the existence of an "arrangement" within the meaning of Section 102(1) of the Act, has failed to establish that the main purpose of the petitioner's transactions was the obtaining of a tax benefit within the meaning of Section 96(1) of the Act, and has failed to bring the case within either clause (b) or clause (d) thereof. The impugned Directions dated 23.02.2022, holding the petitioner's transactions to constitute an impermissible avoidance arrangement, therefore cannot be sustained. The petitioner is entitled to the benefit of set-off claimed under Section 70(2) of the Act in respect of the short-term capital loss of Rs.49,32,71,673/- against the long-term capital gains arising on the slump sale. The question of law framed in the instant case is accordingly answered in favour of the petitioner and against the Revenue.

42. The instant Writ Petition therefore stands allowed, and the impugned Directions dated 23.02.2022, passed by respondent No.3,

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under Section 144BA(6) of the Act for the assessment year 2018-19, are hereby set aside.

43. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, ACJ

NARSING RAO NANDIKONDA, J

Date: 13.10.2026
GSD