IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

ITA No. 10 of 2004 (O&M)

Date of Decision: March 31, 2010

M/s Porrits & Spencer (Asia) Ltd.

…Appellant

Versus

The Commissioner of Income-tax, Faridabad

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Santosh Aggarwal, Advocate, and
Mr. A.C. Jain, Advocate,
for the assessee-appellant.

Ms. Urvashi Dhugga, Advocate,
for the revenue-respondent.

1. To be referred to the Reporters or not? Yes

2. Whether the judgment should be reported in the Digest? Yes

M.M. KUMAR, J.

The assessee-appellant has approached this Court by invoking Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act') challenging order dated 3.6.2003, passed by the Income Tax Appellate Tribunal, Delhi Bench "D", Delhi (for brevity, 'the Tribunal'), in ITA No. 1711 (Del)/97, in respect of Assessment Year 1991-92. The Tribunal has upheld the view taken by the Commissioner of Income Tax (Appeals), Faridabad, inasmuch as, it has not allowed the short term capital loss of Rs. 51,61,875/- incurred by the assessee-appellant on sale of units called as 'US-64'. The instant appeal was admitted on the claim of the assessee-

appellant on the following two substantive questions of law, which were framed on 1.3.2004:-

> "(1) Whether the Tribunal was right in law in confirming that the loss of Rs. 51,61,875/- incurred on account of transactions of purchase and sale of 25 lacs units called 'US-64' was speculative loss under Section 73 of the Income Tax Act and that the assessee was not entitled to set off in respect of the aforestated loss accordingly?
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> (2) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the transactions for purchase and sale of 25 lacs units called 'US-64' of the appellant with the Bank, after holding that these transactions were genuine, were (a) not bona fide transactions, (b) entered into with a motive to avoid liability for tax etc.?"

2. Few facts may first be noticed. The assessee-appellant is a Public Limited Company incorporated under the Companies Act, 1956. It is a subsidiary of Porritts & Spencer Ltd. U.K. and is engaged in manufacturing of engineered fabrics and industrial textiles. The registered as well as corporate office of the assessee-appellant is at Faridabad where it has its factory also. At all material times the assessee-appellant have been carrying on the business of manufacturing and selling machine clothing for different applications to a diverse range of industries in India and abroad.

3. For the Assessment Year 1991-92, the assessee-appellant filed its return of income on 30.12.1991 declaring an income of Rs. 2,93,17,260/-. It was accompanied with computations, mandatory audit reports under Section 44AB of the Act, Annual Report containing Profit and

Loss Account, Balance Sheet and other relevant documents. It is appropriate to mention that on 21.5.1990 the assessee-appellant had purchased 25 lacs units of 'US'64' of Unit Trust of India (UTI) at the then prevalent market rate of Rs. 15/- per unit, for a total consideration of Rs. 3,75,00,000/- from ANZ Grindlays Bank, New Delhi. The units were purchased on credit for the purposes of making investment. The units were duly transferred by the UTI to the assessee-appellant on 30.5.1990, which is evident from the certificates issued in the name of the assessee-appellant. On 5.7.1990, the Board of Directors of the assessee-appellant decided for the sale of the units in question. On 6.7.1990, the assessee-appellant received the dividend of Rs. 45 lacs on the said units. On 20.7.1990, the ANZ Grindlays Bank, New Delhi, debited the overdraft account of the assessee-appellant by Rs. 3,75,00,000/- i.e. the consideration at which the said units were sold by the bank to the assessee-appellant.

4. On account of non-availability of surplus funds and cost of holding them on interest being un-profitable, the assessee-appellant sold the units on 21.7.1990 to ANZ Grindlays Bank, New Delhi, at the then prevailing market rate of Rs. 13.01 per unit, for a total consideration of Rs. 3,25,25,000/-, after deducting interest of Rs. 9,86,300/- at the rate of 16% on the total sale consideration of Rs. 3,75,00,000/- for a period of 60 days. It is apparent that the assessee-appellant incurred a loss of Rs. 51,61,875/- in this transaction, which represents the difference between the purchase price and the sale price plus cost of transferring units, such as expenses on stamps etc. Accordingly, the assessee-appellant in its return of income for the Assessment Year 1991-92 claimed the loss as a short term capital loss and also claimed set-off against its income and offered dividend income of Rs. 45 lacs after the statutory deduction for tax.

5. The assessment was completed vide order dated 25.3.1994 after making numerous deductions and allowances in the returned income. The Assessing Officer, however, did not allow deduction claimed for the short term capital loss of Rs. 51,61,875/- holding that the transactions of purchase and sale of units were not genuine transactions and was a device for tax avoidance. It further held that the loss incurred on account of these transactions was of speculative business within the meaning of Explanation to Section 73 of the Act. As such it was not allowable against the profits and gains of the business of the assessee-appellant. Accordingly, he taxed the entire dividend income of Rs. 45 lacs earned on these units as income from other sources. The Assessing Officer, however, allowed deduction of Rs. 35,13,700/- for it under Section 80M of the Act, which was calculated after deducting from the total dividend the alleged interest of Rs. 9,86,300/- for the loan for purchasing them. A copy of the assessment order is on record (Annexure 'B').

6. On appeal before the CIT (A) Faridabad, the assessee-appellant challenged various additions and disallowances made by the Assessing Officer. The appeal was partially allowed by the CIT (A), vide order dated 31.1.1997 (Annexure 'C'). The CIT (A) upheld the view of the Assessing Officer opining that the transaction concerning unit 'US-64' was speculative in nature. He affirmed the finding of the Assessing Officer declining set-off of the aforesaid short term capital loss.

7. The order of the CIT (A) was challenged by both the assessee-appellant as well as the revenue-respondent. Both the appeals were decided by consolidated impugned order dated 3.6.2003 (Annexure 'A'). Both the appeals were partially allowed. The Tribunal held that the transactions with regard to purchase and sale of unit 'US-64' with the ANZ Grindlays Bank,

New Delhi, were genuine and that the loss incurred by the assessee-appellant on these transaction was loss of speculation business. The transactions were not bona fide because they were entered into with a motive to reduce the liability of tax which is not permissible in law. Accordingly, it was held that the assessee-appellant was not entitled to set-off of the said loss against its income from business. The Tribunal considered Division Bench judgment of the Bombay High Court rendered in the case of **Twinstar Holdings Ltd. v. Anand Kedia, Deputy CIT, [2003] 260 ITR 6** and the judgment of Hon'ble the Supreme Court rendered in the case of **McDowell & Co. Ltd. v. C.T.O., [1985] 154 ITR 148** and proceeded to record the following findings:-

> "20.6 …… No doubt transactions were genuine, as ANZ bank confirmed in having selling (sold?) the units to assessee and then buying the same from assessee. Though one entry was passed on 20th July, 1990, but there was an entry showing debit balance against the assessee on account of purchase and sale of these units. But these transactions cannot be said that they were entered bonafidely as clearly emerges from the facts of the present case that assessee was knowing that the prices of units were highest in the month of May and lowest in the month of July, even then the assessee entered into transactions. On one hand, the bank is say (saying?) that it has already adjusted the amount of interest @ 16% in selling price of units sold to assessee, and on the other hand, the assessee is saying that no interest was paid. *These two contradictory stands itself show that there was a planning to purchase the shares and then sold the same after 60 days and this planning was with a motive, as*

the assessee was knowing that dividend will be declared in the month of June and the same was declared also. The assessee claimed deduction u/s 80-M of the Income-tax Act. On the other hand, the assessee was knowing that there will be a loss on account of sale in the month of July and there was a loss of Rs. 51 lakh and odd, which it claimed against its business income. In this way, the assessee claimed deduction u/s 80-M and then he claimed deduction on account of loss against business income also. This planning, in our considered view, cannot be approved, as the same was clear cut planning to reduce the tax effect, which is not permissible in the eyes of law. It is also worth noting that no banker will pass the entry after 60 days from the date of actual transaction, which was entered on 21st May, 1990, as the same was entered on 21st July, the day when the units were sold by the assessee to the bank. This also clearly proves that there was a clear understanding between the banker and the assessee that the units will be sold after 60 days. Though the units were transferred in the name of assessee and then in the name of bank, but there is no material on record which suggests that physical delivery of the units in question were handed over to the assessee or not, as it seems that the physical possession was with ANZ, to secure the sum of Rs. 3.75 crore invested on behalf of assessee against sale of units to the assessee." (*Italics added*)

8. Mr. Santosh Aggarwal, learned counsel for the assessee-appellant has argued that buying and selling of units by the assessee-appellant could not be treated as speculative business and Explanation to

Section 73 of the Act would not apply. Accordingly, the loss in buying and selling of units of the UTI has to be regarded as business loss and not speculation loss, which could be disallowed by the revenue. It is submitted that the proposition would not be affected by virtue of Section 32(3) of the Unit Trust of India Act, 1963, which creates a fiction to create the UTI a deemed company and distribution of income received by the unit holder a deemed dividend for the purposes of the Act. Therefore, it cannot be said that Section 32(3) makes the unit of the UTI as a deemed share which could be covered by the concept of speculative business. In support of his submission, learned counsel has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **Apollo Tyres Ltd. v. Commissioner of Income Tax, [2002] 255 ITR 273**.

9. However, more fundamental argument advanced by Mr. Aggarwal is that as long as the transaction of purchase and sale of units 'US-64' was within the parameters fixed by law then irrespective of the consequences such a transaction in law cannot be regarded as tainted one merely because the loss to be incurred in the transaction is intended to be used as set-off in respect of the rest of the income. Learned counsel has urged that by virtue of Section 94(7) of the Act, which has been inserted by the Finance Act, 2001, with effect from 1.4.2002, such like transactions have been legally acknowledged and recognised, therefore, the Tribunal has committed grave error in discarding the genuine transactions merely because it would result into claim of short term capital loss. According to the learned counsel even if it is regarded as tax planning, avoidance of tax as against evasion has been held to be permissible. In support of his submission, learned counsel has placed reliance on a Division Bench judgment of Bombay High Court rendered in the case of **Commissioner of**

Income Tax v. Walfort Share and Stock Brokers P. Ltd., [2009] 310 ITR421 (Bom), and has argued that it is not open to the revenue to raise an objection that even prior to insertion of Section 94(7), the loss arising from the transaction in question could be disallowed on the ground that the transaction was not a business transaction or that the loss was an artificial loss and not the actual loss. According to the learned counsel, the motive of the transaction is not relevant consideration. When the assessee-appellant has entered the transaction with a motive to earn losses, which eventually helped him in tax avoidance, the revenue cannot refuse to grant the benefit as long as the transaction is lawful and does not violate any express or implied provision. He has also placed reliance on a Division Bench judgment of this Court rendered in the case of **Commissioner of Gift Tax v. Satya Nand Munjal, [2002] 256 ITR 516 (P&H)**. Placing reliance on the paras under Question No. 2, Mr. Aggarwal has argued that if on account of lacunae in the law or otherwise, the assessee-appellant becomes entitled to avoid payment of tax then it cannot be said that such a transaction would be void merely because it was intended to save the payment of tax. Accordingly, it has been submitted that as long as the law existed before the amendment in Section 94(7) of the Act, the assessee-appellant was entitled to tax advantage despite the fact that a prudent businessman may not invest in a transaction to earn losses. Mr. Aggarwal has also placed reliance on the view taken by a Division Bench of Orissa High Court in the case of **Industrial Development Corporation of Orissa Ltd. v. Commissioner of Income Tax, [2004] 268 ITR 130 (Orissa)**, and argued that a transaction, which is otherwise valid in law, cannot be treated as nonest merely on the basis of some underlying motive, supposedly resulting in some economic detriment or prejudice to the revenue. Therefore, Mr. Aggarwal has urged

that it must be held that a transaction even if it is otherwise valid in law and results in reduction of tax to an assessee, the same cannot be ignored on the ground that the underlying motive of entering into such a transaction by the assessee was to reduce its tax liability to the State. He has also placed reliance on the observations made by Hon'ble the Supreme Court in the case of **Union of India v. Azadi Bachao Andolan, [2003] 263 ITR 706**, which has laid down the aforesaid view, followed by the Division Bench of Orissa High Court. He has placed particular reliance on concluding three paras of the judgment to buttress his stand. For the same proposition, reliance has been placed on two Division Bench judgments of the Delhi High Court rendered in the cases of **Commissioner of Income Tax v. Hindustan Tin Works Ltd., (2009) 226 CTR (Del) 42** and **Commissioner of Income Tax v. Vikram Aditya and Associates P. Ltd., [2006] 287 ITR 268** and also a Division Bench judgment of Madras High Court in the case of **Commissioner of Income Tax v. Lakshmi Mills Co. Ltd., [2007] 290 ITR 663**. Mr. Aggarwal has then placed reliance on certain observations made by a Division Bench of this Court in the case of **Commissioner of Income-tax, Patiala v. Punjab State Electricity Board, [2009] 183 Taxman 419 (Punj. & Har.)**. Referring to the question of law framed and answered by the Division Bench of this Court, learned counsel has pointed out that even if the intention is to avoid tax and the transaction is within the four corners of law, the benefit of transaction cannot be refused merely because it would result into avoidance of tax liability artificially. A particular emphasis has been made by Mr. Aggarwal in his submission by referring to paras 3, 4 and 5.

10. Ms. Urvashi Dhugga, learned counsel for the revenue has, however, submitted that the transaction like the one in hand, cannot be

regarded as bona fide as it is hit by the intention of avoiding payment of tax. In that regard she has placed reliance on the observations made by the Constitution Bench of Hon'ble the Supreme Court in the case of **McDowell and Co. Ltd. (supra)** where it has been held that even if the transaction is genuine, which has been actually acted upon, and the transaction has been entered into with the intention of tax avoidance, then it would constitute a colourable device. She has drawn our attention to the observation made by the Tribunal in respect of the transactions in question and argued that because the assessee-appellant was fully aware about the loss on account of sale in the month of July 1990, which, in fact, resulted into avoidance of the tax payment. Referring to the observations made in the extracted para 20.6 (supra), Ms. Dhugga has submitted that such a tax planning cannot be approved as it is aimed at prejudicing the tax effect, which is impermissible in the eyes of law. She has also highlighted that no banking company would pass the entry after 60 days from the date of actual transaction. She has pointed out that the transaction was entered into on 21.5.1990 whereas the entry was made on 21.7.1990. Accordingly, she has submitted that it is not arms length transaction but appears to be collusive transaction between the assessee-appellant and the banking company on a clear understanding that the units were to be sold after 60 days. According to her, even the physical delivery of the units was not ever handed over to the assessee-appellant, which remained in the custody of the ANZ Grindlays Bank, New Delhi, so as to secure Rs. 3,75,00,000/- invested by the assessee-appellant. She has also placed reliance on the Division Bench judgment of Bombay High Court rendered in the case of **Twinstar Holdings Ltd. (supra)**.

RE: QUESTION NO. 1

11. Question No. 1 is no longer *res integra* because Hon'ble the

Supreme Court in the case of **Apollo Tyres Ltd. (supra)** has considered a similar question and in the concluding portion of the judgment, while rejecting the contention of the revenue that the business of purchase and sale of units by the assessee would amount to a business of speculation, held as under:-

> " ……We have examined the provisions of the UTI Act and we are of the opinion that even though the said section creates a fiction to make the UTI as a deemed company and distribution of income received by the unit holder as a deemed dividend, by virtue of these deemed provisions, it cannot be said that it also makes the unit of the UTI a deemed share. In our opinion, a deeming provision of this nature as found in section 32(3) should be applied for the purpose for which the said deeming provision is specifically enacted, which in the present case is confined only to deeming the UTI as a company and deeming the income from the units as a dividend. If as a matter of fact, the Legislature had contemplated making the units as also a deemed share then it would have stated so. In the absence of any such specific deeming in regard to the units as shares it would be erroneous to extend the provisions of section 32(3) of the UTI Act to the units of UTI for the purpose of holding that the unit is a share. ……"

12. It is pertinent to mention that Hon'ble the Supreme Court specifically rejected the contention of the revenue that Explanation to Section 73 of the Act, (which makes the business of purchase and sale of shares as business of speculation) was applicable to the transaction of a sale and purchase of units. Therefore no detailed examination of the aforesaid

question would be required. Accordingly, question No. 1 is answered in favour of the assessee-appellant and against the revenue-respondent and the view of the Tribunal to that extent is held to be erroneous.

RE: QUESTION NO. 2

13. It would be appropriate to notice the categorical findings of the Tribunal for answering question No. 2. The Tribunal has recorded a finding that the transaction of purchase and sale of units between the parties was genuine, as is evident from the perusal of extracted para 20.6. The Tribunal, however, went on to hold that the transactions were entered bona fide. The basis of the aforesaid conclusion reached by the Tribunal is that the assessee-appellant was aware that the prices of the units were high in the month of May and lowest in the month of July and even then the assessee-appellant entered the transaction. The Tribunal has further recorded a finding that there was a planning to purchase the shares and then to sell the same after 60 days, which was with a obvaious motive. The assessee-appellant was aware that dividends on the units were to be declared in the month of June, which happened and accordingly the assessee-appellant claimed deduction under Section 80-M of the Act. The assessee-appellant was also aware that there would be loss on account of sale of the units in the month of July, which accordingly occurred. The assessee-appellant claimed set off of amounting to Rs. 51,61,875/- against its business income.

14. The question which falls for consideration is whether to apply the principle laid down by Hon'ble the Supreme Court in the case of **McDowell & Co. Ltd. (supra)**, wherein it was held that the judgment of House of Lords in **IRC v. Duke of Westminster, [1936] AC 1 (HL)**, was not applicable. In other words, even if the transaction is genuine and even if it is actually acted upon, it would be permissible in law, inasmuch as, it is

part of continuous tax planning which may be aimed at avoidance of tax not evasion of tax. The aforesaid principle is based on the premise that a tax payer may resort to a devise to divert the income before it arrives to him and effectiveness of the devise would not depend upon consideration of morality but on the operation of the Act.

15. On the strength of the Division Bench judgment of the Bombay High Court rendered in the case of **Twinstar Holdings Ltd. (supra)**, learned counsel for the revenue-respondent has argued that if the transaction is entered into with the intention of tax avoidance and it was known to the parties before hand then even if the transaction is genuine, it would constitute a colourable devise. The aforesaid view is sought to be supported by the observations made in the case of **McDowell & Co. Ltd. (supra)**. . On the contrary the main plank of argument of the learned counsel for the assessee-appellant is that intention and motives are irrelevant. The aforesaid argument has been canvassed on the strength of the judgment of Bombay High Court rendered in the case of **Walfort Share and Stock Brokers P. Ltd. (supra)** and the view expressed by Hon'ble the Supreme Court in the case of **Azadi Bachao Andolan (supra)**.

16. In the case of **Azadi Bachao Andolan (supra)**, Hon'ble the Supreme Court has explained its earlier judgment rendered in the case of **McDowell & Co. Ltd. (supra)** by concluding that the principle laid down by the House of Lord in **Duke of Westminster's case (supra)** have never been abandoned and, therefore, Hon'ble the Supreme Court in **McDowell & Co. Ltd.'s case (supra)** cannot deem to have laid down any different principle. In order to substantiate the aforesaid view their Lordships' of Hon'ble the Supreme Court placed reliance on a number of judgments of the House of Lords. Reference in this regard was made to a leading judgment

rendered in the cases of **Craven v. White, [1988] 3 All ER 495**. In that case the House of Lords considered the impact of **Furniss (Inspector of Taxes) v. Dawson, [1984] 1 All ER 530 (HL); IRC v. Burmah Oil Co. Ltd., [1982] Simon's Tax Case 30 (HL) (SC);** and **W.T. Ramsay Ltd. v. IRC, [1981] 1 All ER 865 (HL)**. After quoting the speeches of Lord Keith of Kinkel and Lord Oliver, Hon'ble the Supreme Court proceeded to conclude that even in the year 1988, the House of Lords emphasised the continued validity and application of the principle in **Duke of Westminster's case (supra)**. Accordingly, the principle laid down in **Duke of Westminster's case (supra)** was reiterated. The observations of Hon'ble the Supreme Court in that regard reads as under:-

> " With respect, therefore, we are unable to agree with the view that Duke of Westminster's case [1936] AC 1 (HL); 19 TC 490 is dead, or that its ghost has been exorcised in England. The House of Lords does not seem to think so, and we agree, with respect. In our view, the principle in Duke of Westminster's case [1936] AC 1 (HL); 19 TC 490 is very much alive and kicking in the country of its birth. And as far as this country is concerned, the observations of Shah, J. in CIT v. Raman [1968] 67 ITR 11 (SC) are very mcuh relevant even today.
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> We may in this connection usefully refer to the judgment of the Madras High Court in M.V. Vallipappan v. ITO, [1988] 170 ITR 238, which has rightly concluded that the decision in McDowell [1985] 154 ITR 148 (SC) cannot be read as laying down that every attempt at tax planning is illegitimate and must be ignored, or that every transaction or arrangement which is

perfectly permissible under law, which has the effect of reducing the tax burden of the assessee, must be looked upon with disfavour. Though the Madras High Court had occasion to refer to the judgment of the Privy Council in IRC v. Challenge Corporation Ltd. [1987] 2 WLR 24, and did not have the benefit of the House of Lords' pronouncement in Craven's case [1988] 3 ALL ER 495 (HL); [1990] 183 ITR 216 (HL), the view taken by the Madras High Court appears to be correct and we are inclined to agree with it."

17. Hon'ble the Supreme Court also proceeded to approve the following view of Gujarat High Court in **Banyan and Berry v. Commissioner of Income Tax, [1996] 222 ITR 831**, while interpreting **McDowell's case (supra)**:-

" The court nowhere said that every action or inaction on the part of the taxpayer which results in reduction of tax liability to which he may be subjected in future, is to be viewed with suspicion and be treated as a device for avoidance of tax irrespective of legitimacy or genuineness of the act; an inference which unfortunately, in our opinion, the Tribunal apparently appears to have drawn from the enunciation made in McDowell's case [1985] 154 ITR 148 (SC). The ratio of any decision has to be understood in the context it has been made. The facts and circumstances which lead to McDowell's decision leave us in no doubt that the principle enunciated in the above case has not affected the freedom of the citizen to act in a manner according to his requirements, his wishes in the manner of doing any trade, activity or planning his affairs with

circumspection, within the framework of law, unless the same fall in the category of colourable device which may properly be called a device or a dubious method or a subterfuge clothed with apparent dignity."

18. The aforesaid discussion would show that once the transaction is genuine merely because it has been entered into with a motive to avoid tax, it would not become a colourable devise and consequently earn any disqualification. Hon'ble the Supreme Court in the concluding paras of its judgment in **Azadi Bachao Andolan (supra)** has rejected the submission that an act, which is otherwise valid in law, cannot be treated as nonest merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest as per the perception of the revenue. The aforesaid view looks to be the correct view. It has ready support from the Division Bench judgment of this Court rendered in the case of **Satya Nand Munjal (supra)** and the Division Bench judgment of Orissa High Court in the case of **Industrial Development Corporation of Orissa Ltd. (supra)** and various other judgments of Delhi and Madras High Courts (supra).

20. When the principles laid down in the case of **Azadi Bachao Andolan (supra)** are applied to the facts of the present case it becomes evident that the question is liable to be answered in favour of the assessee-appellant and against the revenue-respondent. In the present case, the transaction concerning purchase of units has been held to be genuine by the Tribunal. It is also evident that the basic object of purchasing the units by the assessee-appellant was to earn dividends, which are tax free under Section 80-M of the Act and to sell the units by suffering losses. Thus, it cannot be concluded by any stretch of imagination that the assessee-

appellant used any colourable devise, particularly when it has been recognized with effect from 1.4.2002 by incorporating sub-section (7) of Section 94 of the Act. By inserting the aforesaid provision, the Parliament has now recognized and regulated the purchase and sale of units and the dividends/income received from such units. Therefore, question No. 2 is liable to be answered against the revenue-respondent.

21. The argument of the learned counsel for the revenue-respondent based on the judgment rendered in the case of **McDowell & Co. Ltd. (supra)** cannot be accepted because the judgment rendered by Hon'ble Mr. Justice O. Chinnappa Reddy in **McDowell's case** has been explained in detail by the later judgment of Hon'ble the Supreme Court in the case of **Azadi Bachao Andolan (supra)**. It is well settled that if a smaller Bench of Hon'ble the Supreme Court has lateron explained its earlier larger Bench then the later judgment is binding on the High Court. In that regard reliance may be placed on a Full Bench judgment of this Court rendered in the case of **State of Punjab v. Teja Singh, (1971) 78 PLR 433**. Speaking for the Bench, Hon'ble Mr. Justice S.S. Sandhawalia observed as under:-

> "Now it is trite learning to say that when an earlier judgment of the Supreme Court is analysed and considered by a latter Bench of that Court then the view taken by the latter as to the true ratio of the earlier case is authoritative. In any case latter view is binding on the High Courts. ……"

Likewise, reliance may be placed on another Full Bench judgment of this Court in **M/s Daulat Ram Trilok Nath v. State of Punjab, AIR 1976 P. & H. 304**. In para 16, speaking for the Full Bench, Hon'ble Mr. Justice S.S. Sandhawalia held that "*the construction which the Supreme Court itself places on an earlier precedent is obviously binding*

and authoritative …….". The aforesaid view has also been followed by another Full Bench of this Court in the case of **Subhash Chander Kamlesh Kumar v. State of Punjab, (1990-2) 98 PLR 666**. In that case the Full Bench was considering the ratio of the judgment rendered by a Constitution Bench of Hon'ble the Supreme Court in the case of **K.K. Puri v. State of Punjab, AIR 1980 SC 1008**. The aforesaid judgment was analysed and explained by the later smaller Benches of Hon'ble the Supreme Court in the cases of **Sreenivasa General Traders v. State of A.P., AIR 1983 SC 1246** and **M/s Amar Nath Om Parkash v. State of Punjab, AIR 1985 SC 218**. Accordingly, the Full Bench held that the later judgments although by smaller Benches, which have analysed and explained the Constitution Bench were binding. Accordingly, we take it as well settled that if a smaller Bench has lateron explained the judgment of a larger Bench of Hon'ble the Supreme Court then the later is binding. Examined in the aforesaid perspective, the view expressed by Hon'ble the Supreme Court in the case of **Azadi Bachao Andolan (supra)**, has to be accepted as binding. Therefore, it cannot be said that the principle of law laid down by the House of Lords in **Duke of Westminster's case (supra)**, as followed, explained and applied in the case of **Azadi Bachao Andolan (supra)**, is no longer applicable. The principle is found applicable in its native country and cannot be deemed to have been abandoned. Moreover, no such principles having been laid down in the case of **McDowell & Co. Ltd. (supra)** by the majority judgment, it is not possible to accept the argument advanced by the revenue-respondent. Accordingly, the second question is also answered against the revenue-respondent and in favour of the assessee-appellant.

22. As a sequel to the aforesaid discussion, this appeal succeeds. Question Nos. 1 and 2 are answered in favour of the assessee-appellant and

against the revenue-respondent.

(M.M. KUMAR)
JUDGE

(JITENDRA CHAUHAN)
JUDGE

March 31, 2010

Pkapoor