

K.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.490 OF 2004

The CIT, City-VIII, Mumbai )..Appellant  
Vs.  
Tainwala Trading & Investment Co. )  
Ltd., Mumbai. )..Respondents

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Mr.B.M.Chatterji with Mr.Sureshkumar &  
Mr.P.S.Sahadevan for the appellant.

Mr.S.N.Inamdar for the respondents.

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Coram : F.I.Rebello & R.S.Mohite, JJ

Date : 1st April, 2009.

PC

1. The revenue is in appeal on the following questions :-

(A) Whether on the facts and in the circumstances of the case the Tribunal was correct in law and applying the ratio of the decision of Hon'ble Supreme Court decision in the case of CIT Vs. Sutlej Cotton Mills 116 ITR 1 (SC) and allowed the respondent's appeal holding that the loss incurred was in the course of carrying on the business ?

(B) Whether in the facts and circumstances of the case the Hon'ble Tribunal was justified in holding that the Revenue had no material on record to show that the Respondents Assessee intended to treat Naked Convertible Warrants as investment against the claim of Trading Stock ?

2. The A.O in instant case has held that investment in the shares was not by way of stock in trade but by way of investment. That order was upheld by CIT(A) and appeal was preferred against the said order by the assessee before the ITAT. ITAT on considering the material on record and applying the

principles, held that the NCW purchased by the assessee was stock in trade and accordingly allowed the appeal by allowing the losses incurred. It is this order which is the subject matter of the present appeal.

3. A few facts can be set out. The assessee had contributed in the convertible warrants in respect of a company in which it had share holding to the extent of 33 per cent. The rest of the share holding in terms of the record, where the financial institutions as also independent share holders. The convertible warrants were issued and purchased at the price of Rs.7 per warrant. Thus warrant had to be converted into equity shares. The company on the specified date offered conversion of shares to the holders of its convertible warrant at a price of Rs.72 as per SEBI guidelines. At the relevant time the price in the market was Rs.14/-. On account of this the assessee did not exercise the option of getting the convertible warrant converted into equity shares, thereby suffered a loss which was accounted as a business loss.

4. In our opinion, considering the facts as set out, we have no reason to differ with the view taken by the Tribunal. In the light of that, there is no merit in this appeal which is accordingly dismissed.

(R.S.Mohite,J)

(F.I.Rebello,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.358 OF 2005

The CIT, City-VIII, Mumbai )..Appellant

Vs.

Tainwala Trading & Investment Co. )  
Ltd., Mumbai. )..Respondents

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Mr.B.M.Chatterji with Mr.Sureshkumar &  
Mr.P.S.Sahadevan for the appellant.

Mr.S.N.Inamdar for the respondents.

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Coram : F.I.Rebello & R.S.Mohite,JJ

Date : 1st April, 2009.

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1. In respect of the very same issue in respect of another assessee in Income Tax Appeal No.490 of 2004 we have dismissed the appeal for the reasons set out therein. For the same or similar reasons, we find no merit in this appeal which is accordingly dismissed.

(R.S.Mohite,J)

(F.I.Rebello,J)