

IN THE HIGH COURT OF DELHI AT NEW DELHI

02.12.2009

Present: Mr. Sanjeev Sabharwal, Adv. for the Appellant.

Mr. Ajay Vohra, Ms. Kavita Jha and Ms. Akansha Aggarwal, Advs. for the Respondent.

ITA No. 1271/2009

THE COMMISSIONER OF INCOME TAX-II Vs. JINDAL PHOTO INVESTMENT LTD.

From the following observations contained in para 6 of the order of the Income Tax Appellate Tribunal (ITAT), it is abundantly clear that the decision rests on the finding of fact, which were arrived at by the CIT(A) and affirmed by the ITAT.

?6. We have heard the parties and have perused the material on record. Undisputedly, the shares sold by the assessee in the year under consideration had been held by the assessee for a considerable, long time. Moreover, these shares were shown as investment under the head ?non-current assets? by the assessee in its books of account and balance sheet, right from the date of acquisition thereof in the earlier years also, the situation had remained much the same and had remained unchallenged by the department. From treatment accorded by the assessee to these shares, the evident intention of the assessee was to hold shares for a long period of time and to sell them at an appropriate stage in order to earn income in the nature of dividend and capital appreciation. It is also undisputed that the earnings from the sales of shares were used for payment of loan. In such circumstances, it was erroneous to hold that the assessee kept the shares for trading purposes. As per the AO, he did not give any forceful reason for treating the profit/loss arising from the sale of shares as profits and gains of the assessee from business or profession. The learned CIT (A), in our view, correctly appreciated this factual matrix and it was only thereupon he ordered

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the AO to tax the profit/loss on sale of shares during the year as capital gain and not as profits and gains from business or profession.?

**No question of law arises.
Dismissed.**

A.K. SIKRI, J.

**SIDDHARTH MRIDUL, J.
DECEMBER 2, 2009
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