

BHC in Prasad Agents Private Limited (engaged in trading of shares etc): For first time, in context of explanation to section 73 of the Act (dealing with classification of loss arising from sale/purchase of shares in hands of a company assessee as speculative loss), has interalia held that:

- a) CBDT Circular No. 204/1976 as relied by assessee's counsel to contend that explanation to section 73 needs to be limited by the object stated in aforesaid circular viz being applicable only in cases where assessee having interest in group of companies manipulates their shareholding to reduce their taxability, is not correct *as when a Circular comes in conflict with plain language of a statute, statutory language has to be applied*. Further, from wholesome reading of the aforesaid circular along with subject explanation, it dispels the doubt that said explanation is applicable to all the cases (except specifically excluded) where loss from sale/purchase of shares is involved. *In this connection further reference may be made to*
- Ahd Special Bench of ITAT ruling in AMP Spinning Weaving Mills 100 ITD 142 (impliedly approved by BHC in subject case - as similar proposition laid down in SB ruling)
 - Kar HC in Mysore 195 ITR 404 - not considered in subject case (fav. to assessee)
 - Del ITAT in SRJ Securities 81 TTJ 484
 - Del ITAT in Aman Portfolio 92 ITD 324 (impliedly overruled by BHC in subject case as CIT-A applied the ruling of Aman Portfolio to decide the issue in favour of assessee - overruled by ITAT in underlying case- ITAT order upheld by BHC)
 - Del ITAT in Frontline Portfolio 96 TTJ 201
- b) Subject explanation is also applicable in cases where loss from shares has occurred due to year end valuation, as it is not the requirement of law that both purchase and sale should occur to apply the subject explanation. Also for similar proposition following case laws may be referred to
- Kol ITAT in Paharpur 85 ITD 745
 - Cal HC in Sun Distributors 68 Taxman 223
 - Prudential Construction 75 ITD 338

However, Ahd ITAT in Parkar Securities 8 SOT 257 since followed by Del ITAT in JPS Stock 163 Taxman 89 Magazine and Bonanza Portfolio ITA 4083/Del/2006 has interalia concluded that subject explanation is not applicable in case of stock brokers "forced"/under compulsion transactions of share sale/purchase (transactions initially done by brokers for clients later disowned by them and adopted by broker in business interests).

Further, Mum ITAT in Sheela Securities 114 TTJ 112 has concluded that where share trading by broker is very small in proportion to brokerage income and assessee is predominantly a broker, explanation to section 73 is not applicable.