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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 112/2000

C.I.T.DELHI-III Appellant

Through: Mr. Sanjeev Sabharwal, Sr. Standing
Counsel.

versus

M/S.ORIENT INSTRUMENT P.LTD. Respondent

Through: Dr. Rakesh Gupta with Mr. Rishabh
Kapoor, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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20.11.2013

1. The following substantial question of law was framed at the time of admission of this appeal: -

"Whether the Tribunal was justified in its interpretation of the explanation to Section 73 of the Income-tax Act 1961?"

2. The assessee in the present case at the relevant time was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission etc. It reported Rs.5,53,500/- as loss for the relevant period AY 1991-92 on account of a transaction whereby it purchased and sold shares. The Assessing Officer was of



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the opinion that this amounted to a speculative transaction and consequently the loss could not be set off against the assessee's profits earned from other businesses. The disallowance was carried in appeal unsuccessfully by the assessee. The Appellate Commissioner returned the findings that the assessee was not engaged *inter alia* in the business of purchase and sale of shares so as to fall into the mischievous transaction under Section 73. The Appellate Commissioner took into consideration the Resolution of the company made at the relevant time on 30.10.1990 and also the fact that it was engaged in other business. The Appellate Commissioner dismissed the assessee's appeal and the matter was carried in further appeal to the ITAT which accepted the assessee's appeal.

3. Mr. Sanjeev Sabharwal, Sr. Standing Counsel for the Revenue urges that the transaction in question was a speculative one falling within the Explanation to Section 73 (4). He placed reliance upon the decision of Madhya Pradesh High Court reported as *Commissioner of Income Tax v. Bhikam Chand Jankilal*, 131 (1981) ITR 554 to say that even a single transaction of sale or purchase of shares might amount to business. Counsel for the assessee Dr. Rakesh Gupta, on the other hand, relied upon the decision of the Calcutta High Court reported as *Standipack Pvt. Ltd. v. Commissioner of Income Tax* (2013) 350 ITR 251 (Cal.) in support of his submission.

4. In the present case, the facts are that the assessee was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission. By all means, the transaction whereby it purchased the shares and incurred loss on account of the fall in the



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value of the share was a solitary one. The findings of the Tribunal that the transaction did not constitute the business carried on by the company, cannot be termed as perverse or unreasonable. In the circumstances, the Court is satisfied that no substantial question of law arises.

5. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 20, 2013

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