IN THE HIGH COURT OF DELHI AT New Delhi

ITA No.329/2009

CIT ... Appellant through
Ms. P.L. Bansal with
Mr. Sanjeev Rajpal and
Ms.Anshul Sharma, Advs.

versus

SMT. BALA KAUL ..... Respondent through None
CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE RAJIV SHAKDHER
O R D E R
28.05.2009

A sum of Rupees ten crore was advanced by the Respondent/Assessee to the stock brokers M/s. N.H. Securities for the purchase of shares. The Brokers failed to purchase shares and have also not returned the sum of Rupees ten crores. The Assessing Officer disallowed the claim for bad debts on the strength of Section 36(2) of the Income Tax Act, 1961. The Assessing Officer further held that there was no definitive demarcation in the portfolio with regard to whether the shares were intended as investments or stock-in-trade. Despite this finding the Assessing Officer allowed 100 per cent loss in respect of Infosys shares and 50 per cent loss in respect of shares of Satyam, aggregating Rupees 5,41,25,000/- as a business loss. The remaining Rupees 4,58,68,845/- was treated as Capital Loss. The CIT (A) came to the conclusion that the past practice is not the only decisive factor to determine whether shares were intended to be held as investments or by way of stock-in-trade. On an appreciation of evidence placed before him, the CIT (A) has concluded that it is very clear that the advance was made on trading account. .The disallowance of Rupees 4,58,68,845/- is therefore deleted. The ITAT has concurred with this conclusion.

K. Ravindranathan Nair vs. CIT, [2001] 247 ITR 178(SC): 2001(1) SCC 135 lays down that the Tribunal is the final fact finding Authority and its decision is alterable only if it is perverse [See CIT vs. Mukundray K. Shah, [2007] 290 ITR 433(SC)], CIT vs. P. Mohankala, (2007) 6 SCC 21 and T. Ashok Pai vs. CIT, Bangalore, (2007) 7 SCC 162 which precedents prescribe that only palpably perverse conclusions pertaining to the factual matrix should be interfered with by the High Court.

The concurrent findings of the CIT (A) as well as the ITAT are not, in our opinion, perverse. Hence, we find no reason to delve further into their correctness.

No substantial question of law arises for our consideration. Appeal is dismissed.

VIKRAMAJIT SEN, J
RAJIV SHAKDHER, J

May 28, 2009