

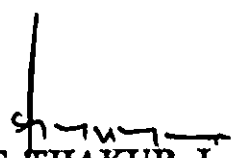



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI ITA 175/2006</p> <p>COMMISSIONER OF INCOME TAX DEL ..... Appellant Through: Mr.J.R. Goel, Adv.</p> <p>versus</p> <p>M/S C.T.INVESTMENTS P.LTD. .... Respondent Through: None.</p> <p><b>CORAM:</b> <b>HON'BLE MR. JUSTICE T.S. THAKUR</b> <b>HON'BLE MR. JUSTICE B.N.CHATURVEDI</b></p> <p style="text-align: center;"><b><u>ORDER</u></b> <b>24.01.2006</b></p> <p>%</p> <p>In the return filed by the assessee for the assessment year 1997-1998, claimed a loss of Rs.30,69,823/- arising out of sale and purchase of shares. The Assessing Officer disallowed the said loss on the ground that the same was speculative and the provisions of Explanation to Section 73 of the Income Tax Act were applicable thereto. In an appeal preferred by the assessee against said disallowance, the Commissioner of Income Tax (Appeals) noticed relevant facts and came to the conclusion that the company was carrying business of granting loans and advances apart from making investment in shares. The Commissioner also noticed the details showing that the company had sold its shares to discharge the loans earlier taken by it. The Commissioner held that the loss suffered by the assessee was not speculative in character and that Section 73 did not apply to the case. The revenue appealed against the order before the Tribunal who affirmed the finding recorded by the Commissioner and observed:</p> <p style="text-align: center;">"Having carefully examined the orders of lower authorities</p>



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		<p>and the relevant evidences in the light of rival submissions, we find that the assessee has placed the details of shares and its holding and other nature of activities. From the details available on record only one inference can be drawn that the assessee is an investment company and also engaged in granting loans and advances and part of its income is of dividend income on the shares held by it. In these circumstances we find no justification in the Revenue's case that Explanation to Section 73 is applicable to the assessee's case."</p> <p>In the light of the above finding of fact that the assessee was carrying business in granting loans and advances and that a part of its income was from dividend earned on shares held by it, it is difficult to see how the Revenue can still insist that Explanation to Section 73 was applicable.</p> <p>Mr.Goel, all the same argued that the finding recorded by Commissioner and the Tribunal that the assessee was engaged in granting loans and advances was without any basis and perverse in law. He further argued that neither the Commissioner nor the Tribunal had recorded a finding that granting of loans and advances was the principal business of the assessee which was one of the requirements for the Explanation to Section 73 to be rendered inapplicable.</p> <p>We see no merit in either one of these contentions. The Tribunal while holding that the assessee-company was engaged in the business of granting loans and advances, referred to and appraised the material on record and affirmed the finding of the Commissioner in that regard. That apart, the fact that granting of loans and advances was the principal business of the assessee was not disputed even by the Assessing Officer while disallowing</p>



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		<p>loss. The Assessing Officer had while holding that the Explanation to Section 73 was applicable given a three-fold reason in the order passed by him. The first of these reasons was that the transactions between the assessee-company and C.T. Cotton Yarn P. Ltd. and Capital Trust Ltd. were bogus transactions and a bogus loss had been created to off-set fixed income received by way of dividend, interest and consultancy. The second reason given by the Assessing Officer was that the transactions were speculative transactions within the meaning of Section 43(5) of the Income Tax Act. The third and the only other reason given for disallowing the loss was that the assessee-company was not covered by the Explanation to Section 73 regarding deemed speculative business. The Commissioner and the Tribunal have not, however, agreed with that line of reasoning and have on a re-appraisal of the available material held that the company was indeed engaged in the business of granting loans and advances and that interest and dividend income from the shares purchased by it did not render the company amenable to the provisions of the explanation. In the light of the said findings of fact which are not open to question before us, no substantial question of law arises for our consideration in this appeal which fails and is hereby dismissed.</p> <p style="text-align: right;">   T.S. TILAKUR, J    B.N. CHATURVEDI, J </p> <p style="text-align: center;">JANUARY 24, 2006</p> <p style="text-align: center;">GR</p>