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% 05.08.2008

Present: Mr. Rishi Aggarwala, Advocate for the Appellant.
Mr. Sanjeev Sabharwal, Advocate for the Respondent.

+ CM No.11102/2008 in ITA No. 949/2008

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Allowed subject to all just exceptions.

+ ITA No. 949/2008

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This appeal has been preferred by the assessee against the order of the Tribunal dated 16.11.2007 in respect of the assessment year 2001-02. The assessee had given a sum of Rs.40.00 lacs to one Mr. Gautam Nemani, who is a share broker. After some difficulty, the assessee was able to recover only a sum of Rs. 10.00 lacs. The balance sum of Rs. 30.00 lacs was written off as a bad debt by the assessee. The Assessing Officer rejected the plea taken by the assessee that the said sum of Rs. 30.00 lacs be written off as bad debt. The Assessing Officer was of the view that the sum of Rs. 40.00 lacs which had been given to Mr. Gautam Nemani was for investment in shares and, therefore, the amount of Rs. 30.00 cannot be written off as a bad debt, but has to be construed as a capital loss. This finding of the Assessing Officer was confirmed by the CIT (Appeals).



The Tribunal considered the question as to whether the action of the assessee in giving the sum of Rs. 40.00 lacs to Mr. Gautam Nemani, a share broker, for the purchase of shares can be construed to be an adventure in the nature of trade. This question was also material in the background that the transaction was a single and isolated transaction by the assessee. The Tribunal noted that neither in the past nor after the assessment year 2001-02, the assessee indulged in the business of investment in shares. The Tribunal also noted the Supreme Court decision in Venkataswami Naidu & Co v. CIT : 35 ITR 594 (SC) and noted that the Supreme Court had observed that the test to determine whether a transaction is an adventure in the nature of trade cannot be based on any abstract principle, but must depend on the facts and circumstance of a given case.

The tribunal examined the facts of the present case and found that all earlier and later purchases of shares by the assessee were held as investments, and not as stock-in-trade of the business of investment in shares. Consequently, the tribunal concluded that it could not be accepted that the assessee intended that the shares



·proposed to be purchased from Mr. Gautam Nemani were to be held as stock-in-trade of the business of investment in shares. It was held that the loss in question, therefore, could not be considered as one which occurred in the course of any business which the assessee carried on or intended to carry on. The tribunal confirmed the finding of the Assessing Officer and the CIT (Appeals).

We find no cause to interfere with the reasoning and findings of the Income Tax Appellate Tribunal. In any event, no substantial question of law arises for our consideration. The appeal is dismissed.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

August 05, 2008
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