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

Judgment reserved on : 09.05.2011
% Judgment delivered on: 31.05.2011

\+ **ITR No. 5/1996**

M/S PRAGATI CONSTRUCTION CO. ..... APPELLANT

Vs

DY. COMMISSIONER OF INCOME TAX ..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Mr R. M. Mehta, Advocate
For the Respondent: Ms Rashmi Chopra & Mr Chandramani Bhardwaj, Advocates.

CORAM :-
HON'BLE MR JUSTICE SANJAY KISHAN KAUL
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. This is a reference filed under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'I.T. Act') against the judgment dated 24.01.1995 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal') pertaining to assessment year 1989-90. The question of law which has been referred to us for adjudication is as follows:

"Whether, on the facts and in the circumstances of the case the ITAT has erred in law in disallowing the loss of Rs 31.05 lakhs claimed by the assessee as a trading loss in its business of purchase and sale of flats."

2. The aforementioned question of law arises in the background of the following facts which we have culled out from the orders of the authorities below:

2.1 The assessee at the relevant point in time, was carrying on the business of construction, purchase and sale of flats. It appears that the assessee's sister concern, i.e., Pragati Construction Co. (P) Ltd. (hereinafter referred to as 'PCL') had made a bid, in an auction, held by the Slum Wing of the Delhi Development Authority (in short 'DDA'), in respect of, plot no. 8 situate at Asaf Ali Road, New Delhi. PCL had hoped that if it were to succeed in the auction, it would construct a multi-storey building thereon under the name and style of Ambika Tower House. It is important to note that the auction was held on 12.03.1982. On the same day, the assessee evidently issued a cheque in the sum of ₹ 44.50 lacs to purchase a bank draft of an equivalent amount. The bank draft was evidently handed over to PCL on 12.03.1982, ostensibly to purchase commercial space in the proposed multi-storey building, i.e., Ambika Tower House.

2.2 Since PCL tendered a bid in the sum of ₹ 1.92 crores, which was the highest bid, it was declared as the successful bidder. The terms of the auction, however, required payment of 25% at the fall of the hammer PCL evidently paid a sum of ₹ 48 lacs as earnest money to the DDA. On 30.03.1982, DDA had issued a demand notice to PCL calling upon it to deposit the balance amount of ₹ 1.44 lacs. The said amount was payable by 29.05.1982 (as per the record, the balance amount somehow appears to be shown as 1,44,00,035/- to be paid by 29.05.1982). Evidently PCL did not pay the balance amount and instead filed a suit in this court being: CS(OS) no. 766/1982. The

said suit was dismissed on 01.02.1983. During the pendency of the said suit, a s suit being CS(OS) No. 993/1983 was filed again in this court seeking an injunction against DDA from forfeiting the earnest money. It appears that an injunction initially granted by this court was subsequently vacated by an order dated 25.02.1985. Consequently, the DDA, after obtaining approval of the Lt. Governor, forfeited the earnest money. The forfeiture was effected on 04.04.1985.

2.3 It is pertinent to note that even though the assessee had initially paid a sum of ₹ 44.50 lacs to PCL, the said sum was adjusted to recover a payment of ₹ 36.5 lacs. It has also emerged from the record that PCL's dispute with DDA revolved inter alia around the issue of "control drawings"; which according to PCL were inaccurate. It has further emerged from the record that for each such transfer of space in the building PCL had to obtain a prior permission of the DDA against prescribed fee of ₹ 100. Furthermore, as is obvious, the space in the building could not have been sold till the dispute regarding the control drawings was settled. From the documents filed by PCL, it emerges that the PCL received the control drawings only on 11.05.1982 and that PCL had written to the Lt. Governor on 17.05.1982, detailing out the flaws in the control drawings supplied by DDA. As a matter of fact in PCL's communication to the Lt. Governor, it had been pointed out that the flaws which obtained in the control drawings would hamper PCL's negotiation with the prospective buyers. This dispute was obviously not resolved.

2.4 Curiously, the assessee appears to have entered into an agreement with PCL on 02.06.1992, despite the aforesaid circumstances obtaining. It has also emerged from the record that for the space that the assessee had booked as per the terms of its own agreement, it would be required to pay to PCL a total amount of ₹ 95 lacs, against which,

it was required to pay earnest money equivalent to 25% of the said amount which ordinarily come to a sum of ₹ 23.25 lacs. The said calculation was worked out on the basis that the rate would be about ₹ 2500 per sq. ft.

2.5 Even though, as indicated above, the forfeiture of the earnest money of the PCL by the DDA took place on 04.05.1985, the assessee debited the sum of ₹ 31.50 lacs in its accounts only on a receipt of the letter from PCL dated 14.12.1988. By this letter, PCL apparently communicated to the Assessee, the factum of forfeiture of ₹ 48 lacs paid to DDA and also the fact that since it does not have any tangible assets which could be encashed in the market, it would not be possible for it to refund the money to the assessee. It may however be noted at this juncture that it has been found as a matter of fact that, in assessment year 1984-85, at the request of the assessee a sum of ₹ 5.50 lacs was returned by PCL to the assessee, which is why, the outstanding dues had come down from ₹ 36.55 lacs to ₹ 31.05 lacs. The authorities below also found as a matter of fact that in the accounting year prior to the one in issue, regular transactions had taken place between assessee and PCL. The assessee had received rent from PCL while PCL in turn, had purchased flats from the assessee.

2.6 It is also not disputed that out of the six directors on the board of PCL, three individuals at the relevant point in time were partners in the assessee's firm. It is also an admitted fact that at the relevant point in time when the assessee paid monies to PCL, the share capital of PCL was a mere sum of ₹ 24,000/-.

3. The assessee, in the first instance, before the Assessing Officer had claimed that the sum of ₹ 31.05 lacs should be allowed as bad debts. The Assessing Officer after dwelling into the facts came to the conclusion that the amount in issue could not be

written off as a bad debt as it had not been shown as a trading receipt either previous year in issue or prior to that, for the purposes of either swelling its profits, or to reduce its losses in any of the years, including the previous year in issue. The Assessing Officer, therefore, concluded by his order dated 31.05.1991, that the amount in issue, was paid by the assessee to PCL as an advance. This being so, he came to the conclusion that, the assessee's case was not covered under the provisions of Section 36(1)(vii) of the I.T. Act since the amount paid to PCL could not be treated as a debt in the first place and hence, the amount in issue, could not be allowed to be deducted even if the assessee had written it off in its accounts. Therefore, the sum of ₹ 31.05 lacs was added in the assessee's income.

4. Being aggrieved, the assessee preferred an appeal with the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)']. Before the CIT(A) even though the assessee had raised a ground, in the alternative, that the amount in issue should be treated as a trading loss, it went on to seek a deduction on the ground that it was a bad debt, in respect of which it ought to be allowed a deduction under the provisions of Section 36(1)(vii) of the I.T. Act.

4.1 As a matter of fact, by a letter dated 17.12.1991, the assessee had sought a modification in the grounds of appeal as filed initially with the CIT(A). The ground in the modification application/letter, as extracted in the order of the CIT(A), suggests that the assessee gave up its alternative ground that the amount in issue be treated as a trading loss. Therefore, the CIT(A) after perusing the record came to the conclusion that since the assessee had not reflected the amount in issue, as income either in the previous year in issue or in the earlier year in which it was sought to be written off, the assessee's claim

for deduction was not maintainable. The CIT(A) analysis was based on the amen brought about in Section 36(2)(i) by the Direct Taxes law (Amendment) Act, 1987 w.e.f. 01.04.1989. By virtue of the said amendment clause (i) of Section 36(2) of the I.T. Act was substituted for the following:

> *"No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee."*

5. This amendment was applicable for the assessment year in issue, i.e., 1989-90. It may however be noted that the CIT(A) while passing the order took into account the contention of the Assessing Officer that the agreement executed with the PCL by the assessee was erroneous. The CIT(A) took note of the agreement dated 02.06.1982, to which, we have made a reference hereinabove.

6. Being aggrieved by the order of the CIT(A), the assessee escalated the matter further and accordingly, preferred an appeal with the Tribunal. The Tribunal, after a detailed examination of the facts, sustained the orders of the authorities below. Resultantly, the present reference has been made at the behest of the assessee, by the Tribunal.

7. Before us, arguments on behalf of the assessee have been addressed by Mr R.M. Mehta, whereas on behalf of revenue, Ms Rashmi Chopra has advanced submissions.

7.1 At the outset we may note that Mr Mehta claimed deduction before us in respect of the sum in issue, under Section 37 of the I.T. Act which was also the stand of the

assessee before the Tribunal. Mr Mehta has argued before us that the authorities have erred in law, in as much as, having returned a finding of fact that the transaction between the assessee and the PCL was not collusive, it should not have disallowed the deduction merely on the ground that it lacked business prudence.

7.2 Mr Mehra submitted that the lack of wisdom or otherwise was not the test applicable for allowance of deduction under Section 37 of the Income Tax Act.

7.3 It was contended that since PCL was unable to recover the earnest money, which stood forfeited on 04.04.1985; upon taking suitable legal advice the assessee had proceeded to write off the amount in its accounts and hence the claim for deduction. Mr Mehra in support of his submissions has cited the following judgments:

> ***S.A. Builders Ltd. vs CIT (Appeals) & Anr. (2007) 288 ITR 1; M/s Ramchandar Shivnarayan vs CIT (1977) 4 SCC 529; CIT, Madras vs S.N.A.S.A. Annamalai Chettiar (1973) 3 SCC 339*** and ***CIT vs Crescent Films (P) Ltd. (2001) 248 ITR 670***.

8. Ms Rashmi Chopra who appeared for the revenue rebutted the contention of the counsel for the assessee. The learned counsel largely relied upon the orders passed by the authorities below. It was Ms Chopra's submission that the amount in issue had been paid as an advance which was not relatable to the business of the assessee. She further submitted that the deduction could be allowed only if it was connected or was incidental to the business of the assessee. In order to demonstrate the same she drew out attention to the findings of the Tribunal on this aspect.

9. Having heard the learned counsel for the assessee as well as the revenue, we are of the view that the deduction ought not to have been allowed. The reasons for the same are as follows: As already noticed by us while recording the facts, which have emerged

from the record, it is quite clear that at the point in time when cheque in the sum 44.50 lacs was remitted by the assessee to the PCL, it was not in a position to allot any space in the proposed multi-storey complex. The amount was remitted on 12.03.1982 which is the very date on which the plot was auctioned. It has emerged from the record that PCL had joined issue with the DDA with regard to defects in the control drawings. This dispute obtained in May 1982 and even thereafter. It was precisely for this reason that a suit bearing no. 766 /1982 was filed in 1982. During the pendency of the said suit, a second suit being CS(OS) No. 993/1983 was filed. This suit is pending even today. Commercial space, if any, could have been booked by PCL only after it had acquired the control drawings. The record also shows that any sale of commercial space had to have the permission of the DDA for which a fee of ₹ 100 had to be paid. Curiously, the assessee has trotted out an agreement evidently executed between itself and PCL dated 02.06.1982. There was admittedly no written agreement in existence on 12.03.1982, when initially a sum of ₹ 44.50 lacs was paid by the assessee to the PCL. This amount, as noticed above, got adjusted and consequently, what was shown in favour of the assessee was of sum ₹ 36.55 lacs. This sum after refund of ₹ 5.50 lacs got scaled down to ₹ 31.05 lacs; which is presently the amount in issue. The aforesaid facts do show therefore that the amount in issue was not expended to purchase a commercial space in a proposed building. The purpose of payment was subsequently morphed to suit the situation. Thus the condition, required to be fulfilled to sustain a deduction under Section 37 of the I.T. Act that the expense should be incurred for the purpose or should be incidental to the business of the assessee is not fulfilled in the instant case.

10. There is another aspect of the matter which is that the assessee had soug obtained a refund of ₹ 5.50 lacs from PCL, in the assessment year 1984-85. It has also come on record that the assessee had been receiving rent from PCL and as a matter of fact PCL had purchased certain flats from the assessee in the assessment year preceding the assessment year in issue. The picture portrayed that PCL did not have the necessary funds at hand to return the money paid by the assessee to it, seems nebulous to say the least. The only ground which was raised before the authorities below to justify writing off the amount in issue, as a trading loss, was the receipt letter dated 14.12.1988, issued by PCL to the assessee, expressing therein its inability to refund the money and its apparent paucity of solvent tangible asset to repay the amount in issue to the assessee.

10.1 Given the circumstances referred to above, we are unable to appreciate the basis of the legal opinion sought by the assessee, suggesting that PCL was not in a position to return the funds and hence the justification for a write off. It is not in doubt that PCL is still prosecuting the suit. Reliance is placed on conclusions of such tenuous legal opinion oblivious of the fact that the management of both the assessee and PCL has on board a common set of persons. For the foregoing reasons, we are of the view that the money paid by the assessee to PCL was neither for the purposes of business nor for a purpose which was incidental to the assessee's business. As correctly found, the money had been paid to PCL as an advance. Given the fact that there is every likelihood that the money may be recovered, we concur with the view of the authorities below that the amount cannot be written off.

DISCUSSIONS OF JUDGMENTS CITED BY COUNSEL

11. In support of his submissions Mr Mehta has cited several judgments. Mr began with the judgment of the Supreme Court in the case of ***S.A. Builders*** *(supra).* In the said case the Supreme Court was called upon to decide whether the assessee would be entitled to deduction under Section 36(1)(iii) of the I.T. Act in respect of interest paid by the assessee to the bank on funds borrowed by it, which were, in turn advanced by it to its sister concern in the form of interest free loan. The Assessing Officer had disallowed a proportionate amount of interest out of the interest paid by the assessee to the bank, to the extent, the assessee had diverted borrowed funds to its sister concern. In principle, the CIT(A), in that case, had upheld the decision of the Assessing Officer though had reduced the disallowance, as he came to the conclusion that, out of the funds borrowed from the bank by the assessee, a lesser portion could be clearly related as funds diverted to the sister concern.

12. In appeals, preferred both by the revenue and the assessee, the Tribunal allowed the appeal of the revenue and dismissed that of the assessee.

12.1 The High Court of Punjab & Haryana in a reference filed by the assessee affirmed the view of the Tribunal.

13. The Supreme Court after discussing the law on the subject remanded the matter to the Tribunal for a fresh decision in the light of observations made by it. The Supreme Court directed the Tribunal to ascertain, in the given facts and circumstances, whether the assessee had advanced money to the sister concern as a measure of commercial expediency. In this regard the Supreme Court observed that the expression commercial expediency is an expression of wide import, which includes, every such expenditure that a prudent businessman may incur for the purposes of his business. Even though the

expenditure may not have been incurred under a legal obligation, yet it may be allo as business expenditure. The court went on to observe that the expression "***for the purpose of business***" is wider in scope than the expression for earning profits; therefore, the Income Tax Authorities while ascertaining as to whether or not an expenditure is commercially expedient should look at the matter not, from their own point of view, but that of a prudent businessman. The Supreme Court concluded by saying that whether interest on borrowed loan ought to be allowed if advances are made by the assessee to the sister concern would depend on the facts and circumstances of each case. Therefore, taking cue from the principle enunciated by the Supreme Court it is clear that much would depend on the facts of each case.

14. The second case cited was that judgment of the Supreme Court in the case of ***S.N.A.S.A. Annamalai Chettiar*** *(supra)*. This judgment pertains to a claim by the assessee with regard to losses suffered by him during the second world war on account of bombing by the Japanese. The assessee, who was a member of Hindu Undivided Family carried on money-lending business in India and abroad. In the course of settlement of debts often the properties were taken over. The Hindu Undivided Family was disrupted, and consequently, the assessee acquired shares in companies, properties and gardens in Malaya. After partition, assessee continued in money-lending business in Malaya. Due to the bombing carried out by the Japanese, the assessee suffered damages. The losses suffered on account damages reflected was claimed by the assessee as business loss.

14.1 The issue travelled to the Supreme Court for consideration as to whether loss suffered on account of the aforementioned circumstances was incidental to the business carried out by the assessee in Malaya during the war.

14.2 The Supreme Court decided the issue in favour of the assessee. In coming to conclusion, the Supreme Court observed that since it is not disputed that the assessee was carrying on business in Malaya which was a war zone carrying with it every possibility of the area being bombed. Thus, if the assessee had earned profits out of this business, undoubtedly profits earned would have been included in the assessee's assessable income then could it be said that the loss occurring in such a situation was not a loss incidental to the business carried on by the assessee in Malaya during war.

15. The third case cited is the judgment in ***Ramchandran Shivnarayan*** *(supra).* Facts pertaining to this case are briefly as follows: The assessee was a registered firm carrying on business in gold, silver and guineas and also earning income from investment in government securities. During the assessment year in question, a sum of ₹ 50,000/- was brought to the shop of the assessee for purchase of government securities. Out of this, a sum of ₹ 30,000/- was stolen. A police complaint was made, however, the amount stolen was not recovered. The assessee claimed the loss of ₹ 30,000/-, on account of theft, as a trading loss. The matter travelled to the Supreme Court. The Supreme Court in coming to the conclusion whether the loss in the circumstances obtaining in the case would amount to a trading loss applied the test of direct and proximate connection and/or nexus between the business operation and the loss. The Supreme Court observed that if such a nexus is established or, the loss is incidental to the business operation it would be deductable as trading loss. In the background of this the Supreme Court observed that the assessee having borrowed a sum of ₹ 50,000/- from a creditor, which was brought to a particular place by its employee, and such mode of business operation being common and well known, the loss of ₹ 30,000/- on account of theft out of the sum of ₹ 50,000/- which

was meant for purchase of government securities, had to be allowed as a tradin being directly connected with the assessee's business operation.

16. The last case referred to by Mr Mehta was ***Crescent Films*** *(supra).* The facts briefly were as follows: The assessee was in the business of film distribution. In the course of his business the assessee had advanced a sum of ₹ 7.50 lacs to a producer to obtain distribution rights for a film under production. The producer of the film apparently ran into difficulty. A situation emerged which seemed to suggest that the producer would be unable to complete the film. Consequently, the producer requested the assessee to lend him further sum of ₹ 1.10 lacs. The said sum was dealt with in a manner, different from the way in which the initial sum of ₹ 7.50 lacs was treated which, as noticed above, was given as consideration for procuring distribution rights of the film. The said sums were ultimately not paid. The assessee claimed the amounts paid to the producer, as trading loss. The High Court sustained the view of the Tribunal which had sustained the claim of trading loss made by the assessee on the ground that had the assessee not paid, that is, lent money, the assessee could not have realized his investment made to acquire distribution rights in the film. Since the money lent became irrecoverable by reason of picture failing at the box office and the producer being unable to repay his debts, the money so lost by the assessee was rightly held by the Commissioner and the Tribunal to be a trading loss. The court distinguished its earlier judgment in the case of ***CIT vs Coimbatore Pictures (1973) 90 ITR 452*** on facts.

17. It is, therefore, important to focus, in our opinion, on the facts obtaining in the instant case. In the instant case before the Assessing Officer a claim was made for deduction of the amount in issue, on the ground that it had become a bad debt. This

contention continued till the matter reached the CIT(A). There was, however, a fli[illegible] before the CIT(A) as noticed by us hereinabove. Before the Tribunal the assessee gave up its claim that the amount in issue should be allowed as a deduction on the ground that it had become a bad debt. The assessee claimed a deduction on the ground that it was a trading loss and hence deductable under Section 37 of the I.T. Act. Section 37 of the I.T. Act is a residuary provision which, provides for deduction in respect of any expenditure which is not an expenditure of the nature described in Sections 30 to 36 of the I.T. Act and not in the nature of a capital expenditure or a personal expense of the assessee but is laid out or expended wholly or exclusively for the purposes of business or profession; while computing income chargeable to tax under Section 28 of the I.T. Act.

18. In order to deal with the submissions of the assessee we will assume that first two conditions are fulfilled, which is, that the expenditure in issue is not of the nature described in Sections 30 to 36 of the I.T. Act and that it is neither an expenditure in the nature of capital expenditure or a personal expense of the assessee. This leaves us with the last limb of the section, which is, that the expenditure in issue, can only be allowed if it is laid out or expended wholly or exclusively for the purposes of the business. As held in S.A. Builders (supra) the expression for the purposes of business is wider than the expression for the purposes of earning income, profits or gains. Therefore, it ought to be an expenditure, which is, incurred voluntarily for commercial expediency.

19. Thus, the underlying principle is that, the expenditure should be incurred for the assessee's own business irrespective of the fact that it benefits a third party, which could, in given circumstances be a sister concern. In coming to this conclusion the revenue ought to apply the approach which would have been adopted by a prudent businessman

and not what the revenue thought was prudent. With this principle in mind examine the facts which emerged in this case.

20. The assessee paid a sum of ₹ 4.50 lacs to the PCL on 12.03.1982. At the stage at which the money was paid to PCL auction had not been held. Therefore, the assessee, who is in the business of sale and purchase of flats, could not have incurred the said expense for its own business as there was no commercial space acquired by PCL which it could sell to the assessee. The auctioning authority accepted PCL's bid and raised a demand on PCL only on 30.03.1982. PCL admittedly did not pay the monies beyond what it had paid as earnest money and instead got inveigled with the auctioning authority on the issue of flaws in the control drawings. This position undoubtedly obtained till 17.05.1982. The dispute inter se DDA and PCL has not been adjudicated upon as yet. The suit filed is pending adjudication. It has also emerged that PCL could not have sold any commercial space without the permission of the lessor (DDA). Another aspect to be noticed is that despite the dispute obtaining between PCL and DDA with regard to the control drawings the assessee curiously entered into an agreement with PCL on 02.06.1982. Given these facts it is quite evident that the transaction between the assessee and PCL was one where perhaps money had been lent to enable PCL to bid. At that stage contrary to what the assessee had sought to portray there was no intention to purchase commercial space in the proposed building as the plot which PCL sought to bid for was nowhere on the scene. Therefore, the expense was certainly not incurred for the purposes of the assessee's business notwithstanding the fact that it may or may not have earned income or profits. Furthermore, if the test of prudence is applied and that too from the point of view of a businessman, and not that of the revenue, the assessee in our view fails

to pass the test. The reason being: that a prudent businessman would not have com his money for purchase of commercial space at a stage when there were no rights acquired by PCL. By their own admission PCL was a company which had at the relevant point a share capital of ₹ 24000/-. No prudent businessman would have committed such a large sum of money without ensuring that the vendor had something tangible offer in its hands; in the instant case PCL being the vendor.

21. There is another aspect which is, as noticed above, that the suit filed by PCL is still pending adjudication. As noticed hereinabove by us Mr Mehta has not been able to tell us, as to the treatment which PCL has meted out in its books of accounts to the sum forfeited by the DDA. It is not understood as to why the assessee would suddenly choose to claim a deduction in the assessment year 1989-90 based on a letter of PCL dated 14.12.1988 followed by a legal opinion received from its lawyer when the amount stood forfeited on 04.05.1985. Admittedly the assessee has made no demands to recover the amount from PCL. This is despite the fact that both the Assessing Officer and the CIT(A) have returned finding of fact that PCL has not only paid rents to the assessee but also purchased flats from it in the years preceding the assessment year in issue.

22. Before we part with judgment as a footnote we would like to observe the following :

22.1 After the judgment had been reserved Mr Mehta, counsel for the assessee sought to mention the matter, though in the absence of counsel for the revenue. We were informed that even though he had informed the counsel for revenue she had not remained present at the time of mentioning. The methodology adopted according to us was unique.

22.2 Nevertheless Mr Mehta during mentioning sought to bring to our observations in paragraph 4.3 of the impugned judgment. The observation being to the effect that the assessee had shown the amount in issue, in respect of which the deduction was claimed, as advance towards purchase of flats in the assessment year 1989-90. In our opinion this would not help the cause of the assessee since the point in issue is, whether the amount was advanced on 12.03.1982, by the assessee, to PCL was for the purpose of the assessee's business or even for a purpose incidental to its business. As discussed above from the facts which have emerged in the instant case this was definitely not the case.

22.3 According to us PCL was good for its money at least in the assessment year in issue. Therefore, the claim of the assessee for deduction of the amount in issue in the relevant assessment year even on this ground is not sustainable.

23. For the reasons given hereinabove we are of the view that the judgment of the Tribunal has to be sustained. It is ordered accordingly. The question of law is answered in the negative against the assessee. The reference is accordingly disposed of; cost shall follow the result.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL,J

MAY 31, 2011
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