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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: January 30, 2013

+ **ITA 247/2010**

COMMISSIONER OF INCOME TAX

... Appellant

versus

BHUSHAN CAPITAL & CREDITS SERVICES PVT LTD

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Abhishek Maratha, Advocate

For the Respondent : Mr Ajay Vohra, Advocate

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

This appeal under Section 260A of the Income Tax Act, 1961 has been preferred by the Revenue, being aggrieved by the order dated 19.06.2009 passed by the Income Tax Appellate Tribunal in ITA No. 967/DEL/2008 pertaining to the assessment year 2005-06. The issue that has been raised in this appeal pertains to the initial disallowance by the Assessing Officer of ₹73,19,800/- claimed by the respondent-assessee on account of loss incurred on



the sale of 49850 shares held by the respondent-assessee in Rail Track India Ltd. and 63000 shares of Evergrowing Iron & Finvest Ltd.

2. It so happened that in the year in question the respondent-assessee sold three sets of shares as would be evident from the table given below:-

S.No.	Name of the Scrip	No. Of shares	Cost price	Sale price	Difference
1.	Nageshwar Investments Ltd.	94,500	1,95,710/-	76,45,995/-	+74,50,285/-
2.	Rail Track India Ltd.	49,850	50,09,925/-	7,97,600/-	(-)42,12,325/-
3.	Evergrowing Iron & Finvest Ltd.	63,000	41,15,475/-	10,08,000/-	(-)31,07,475/-
				Total Profit	1,30,485/-

3. It is apparent from the aforesaid table that in so far as the shares pertaining to Nageshwar Investments Ltd. are concerned, the profit of ₹74,50,285/- was realized whereas the sales of other two sets of shares of Rail Track India Ltd. and Evergrowing Iron & Finvest Ltd. resulted in losses. The extent of the losses incurred in respect of the sale of shares pertaining to Rail Track India Ltd. and Evergrowing Iron & Finvest Ltd. was ₹73,19,800/-. The Assessing Officer made the said addition on the purported reason that the transaction did not appear to be of a commercial nature and that the respondent-assessee had merely incurred losses to set off the profits that the assessee realized in respect of the sale of shares of Nageshwar Investments Ltd.



It was noticed by the Assessing Officer that the shares of Rail Track India Ltd. had been purchased by the assessee at the price of ₹100.53 per share and the shares of Evergrowing Iron & Finvest Ltd. have been purchased at ₹65.33 per share. They were however sold at ₹16 each and it is because of this that there was a loss of ₹73,19,800/-. The Assessing Officer as well as the Commissioner of Income Tax (Appeals) doubted the values of these shares both, at the time of purchase as well as at the time of sale.

4. Being aggrieved by the addition made by the Assessing Officer and the addition being confirmed by the Commissioner of Income Tax (Appeals), the assessee preferred the said appeal, being ITA No. 967/DEL/2008, before the Tribunal which has allowed the respondent's said appeal. The Tribunal observed that the transaction of purchase as well as sale of the shares of Rail Track India Ltd and Evergrowing Iron & Finvest Ltd. were both done on the basis of networth of the shares as would be evident from the workings given by the assessee before the Assessing Officer as also before the Tribunal. The said shares were not quoted shares and that the valuation of the shares both at the time of purchase as well as at the time of sale of the said shares was on the networth basis which has not been challenged by the Assessing Officer or the CIT (Appeals). It is only that both these authorities have only raised certain doubts as to why such a loss was incurred. However, they have not been able to produce any evidence to dispel the credibility of the prices, as indicated by



the respondent-assessee. When there is no evidence to upset the purchase and sale prices of the said shares, the prices arrived at on the basis of networth of the said companies, as provided by the assessee, would have to be accepted. If that were to be done then the addition could not be made as the transactions would be in order. There is also no finding that the transactions were not legitimate or that the transactions were sham.

5. For the foregoing reasons, we find that no question of law arises for our consideration as the Tribunal has arrived at the correct conclusion on the basis of material on record. The appeal is dismissed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 30, 2013

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