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

+ **ITA 595/2004**
COMMISSIONER OF INCOME TAX Appellant
versus
M/S MOHAIR INVESTMENT & TRAD.C Respondent

+ **ITA 566/2005**
COMMISSIONER OF INCOME TAX DEL Appellant
versus
M/S A.R.LEASING P.LTD. Respondent
Through : Sh. P. Roychaudhry, Sr. Standing
Counsel with Ms. Vibhooti Malhotra, Jr. Standing
Counsel.
Ms. Kavita Jha and Sh. Vaibhav Kulkarni,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **22.09.2016**

In both the appeals, following question of law arises:

“Whether the Income Tax Appellate Tribunal was correct in law in not allocating any value to the detachable warrant enclosed to the Non Convertible Debentures which had entitled the assessee to have a right to subscribe to a share of the company at a discounted rate?”

ITA 595/2004

In ITA 595/2004, the assessee had applied for and obtained Non-Convertible Debentures (NCD) (with detachable warrants) [DW]. The initial value of NCD was ₹250 which entitled the

applicant to one DW. The pre-existing arrangement, however, existed whereby NCDs could be sold without DWs to IL&FS for ₹169. In the event of the latter, the assessee had to make payment of ₹81 per NCD on application and the balance was to be recovered by M/s. Max India Ltd. from IL&FS. In other words, in case the option for sale of NCDs without warrant was not exercised, the applicant was to pay ₹250 at the time of application itself.

During the assessment year AY 1996-97, the assessee reported a business loss of ₹1,81,44,000. The Assessing Officer (AO) held that the loss was not admissible and held that the amount could not be treated as a loss in the course of reasoning that ₹81 could be attributable to DWs and ₹169 was the price determined for debentures.

ITA 566/2005 & ITA 278/2005

In ITA 566/2005, the scheme was similar except that the face value of NCD was ₹200 upon which ₹171 was payable at the time of the allotment and ₹29 was payable at the time of application. The holder of these NCDs was entitled to a DW. In this case, the assessee claimed – upon sale of the debentures a capital loss. The AO disallowed it.

At the outset, it is pointed out that an identical question of law arises in ITA 278/2005 which is pending on the final hearing list. The said matter is hereby taken on the record. The revenue is in appeal against an order which was followed by the ITAT in its decision which is impugned in ITA 566/2005. In these circumstances, ITA

278/2005 too was heard by this Court.

CIT(A) allowed the assessee's claim in ITA 566/2005 but rejected it in the case of the assessee in ITA 595/2004.

Analysis and conclusion

Learned counsel for the assessee sought to rely upon a recent judgment of this Court in *CIT v. M/s. Abhinandan Investment Ltd.* 2015 (376) ITR 153 [hereafter "*Abhinandan 2 (supra)*"]. It was contended that this Court dealt with an identical fact situation and held that the amounts claimed as business loss in that case were admissible. Learned counsel for the assessee in ITA 566/2005 contended that since the essential business of the concern is not investment, and concededly since the amounts paid for the debentures were shown in the balance sheet as investment, the nature of expenditure was essentially capital and consequently on parity of reasoning, the capital loss claim ought to be allowed.

Learned counsel for the revenue further sought to distinguish the ruling in *Abhinandan 1 (supra)*, contending that the decision of the AO and the reasoning adopted were different and that having regard to these, the rule enunciated in *Abhinandan 1 (supra)* should not be applied.

We notice that the judgment in *CIT v. M/s. Abhinandan Investment Ltd. and Ors.* 2002 (254) ITR 538 [hereafter "*Abhinandan 1 (supra)*"] was applied. That judgment was undoubtedly departed from and the matter remitted for reconsideration after the question of law was recast by the Supreme Court. However, this Court's final analysis and reasoning is identical with the one adopted in the

previous judgment. As a result, following the judgment in *Abhinandan 2(supra)*, the question of law is answered against the revenue and in favour of the assessee. The appeals, i.e. ITA 595/2004, ITA 566/2005 & ITA 278/2005 are accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 22, 2016

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