$~19&22

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

\+ ITA 22/2018, CM APPL.935/2018

&

ITA 25/2018

THE PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Through: Mr. Puneet Rai, Advocate.

versus

DMA INVESTMENT PVT. LTD. ..... Respondent

Through: Mr. Rohit Kr. Gupta and Ms. Monika Ghai, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **10.01.2018**

In both these appeals, the question of law urged by the Revenue under Section 260A is whether the amounts declared as short term capital gain, in fact were business income. In both assessment years, the assessee reported various amounts, i.e., ₹52,50,328/- (for AY 2008-09) and ₹10.45 lacs as long term capital loss for 2010-11. After considering the pattern of investment, the Assessing Officer was influenced considerably by the fact that several books of accounts were not maintained and therefore, returned the findings that the amounts reported as gains were in fact business profits/losses. These findings were, however, reversed by the CIT (A) who also took note of the decision of this Court in *Principal Commissioner of Income Tax, Central-3 v. M/s Dreamland Buildtech Pvt. Ltd.* (ITA 829/2015, disposed of on 26.04.2016). The ITAT confirmed that findings.

The question as to whether any income or amount reported in assessee's report constitutes capital gains is essential. In so determining, not only must the frequency of the amount invested with one or the other corporate entity be looked at, but also the intention manifested through various other indicia such as the existence of separate books of accounts, duration of holding, whether dividends are earned etc. must be had regard to.

Having regard to these facts as held in *Dreamland Buildtech (supra)*, the mere circumstance that a large number of securities were purchased and sold in a short duration of time *per se* does not establish an intention that the assessee or the entity would trade in them, resulting in business losses or business profits.

This Court is satisfied that the proper tests were applied in these appeals.

In the circumstances, no question of law arises; the appeals are dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 10, 2018/*vikas*/