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

\+ ITA 495/2024 & CM APPL. 53892/2024

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX -1 .....Appellant

Through: Mr. Debesh Panda, SSC with Mr. Vikramaditya Singh and Ms. Zehra Khan, JSCs with Mr. Kanishk Aggarwal, Advocate

versus

M/S DUXTON HILLS BUILDERS PVT LTD .....Respondent

Through: Mr. Rakesh Gupta, Mr. Somil Agarwal and Mr. Dushyant Agrawal, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **08.11.2024**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (thereafter *the Act*) impugning an order dated 08.12.2023 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in ITA No. 5407/Del/2019 captioned ***M/s Duxton Hills Builders Pvt. Ltd. v. ACIT.***

2. The said appeal (ITA No. 5407/Del/2019) was preferred by the respondent [hereafter *the Assessee*] impugning an order dated 10.06.2019 passed by the learned Commissioner of Income Tax, Appeals-3 [hereafter

CIT(A)] whereby the Assessee's appeal against an assessment order dated 09.12.2018 in respect of assessment year (AY) 2016-17 was rejected. The controversy essentially centers around an addition of ₹1,41,29,289/- made by the learned Assessing Officer (hereafter *the AO*) by disallowing short-term capital loss declared by the Assessee. The Assessee had filed its return of income on 17.10.2016 declaring a total loss of ₹1,42,24,334/-. This included loss suffered on account of purchase and sale of short-term capital assets amounting to ₹1,41,29,989/-. The short-term assets in this case are equity shares of two listed companies, namely Siddartha Business Limited and AF Enterprises Limited. The details of the loss suffered on account of purchase and sale of said shares, as declared by the Assessee, are set out below:

Name of scrip	**Siddhartha Business Limited**	**AF Enterprises Limited**	**Total**
Number of shares sold	2,58,000	15,590	2,73,590
Sale Value	40,23,843.35	21,53,847.90	61,77,691.25
Less Charges	7,217.48	2,966.58	10,484.06
Net Sale Value	**40,16,325.87**	**21,50,881.32**	**61,67,207.19**
Cost of purchase	1,29,45,711.96	73,51,484.21	2,02,97,196.18
Net Profit/(Loss)	**(89,29,386.09)**	**(52,00,602.89)**	**(1,41,19,504.93)**

3. The AO considered the said transaction as bogus on essentially three grounds. First, the AO found that the value of the shares of the two listed companies fluctuated widely and according to him, the same was reflective of the value of shares being manipulated. Second, the AO found that while the SENSEX (an index based on the value of a basket of shares listed on the Bombay Stock Exchange Limited) had increased, the value of the shares in question had fallen significantly. Third, the AO found that the transaction entered into was not commercially prudent. He reasoned that no prudent person would have invested in these shares as the accounts of the companies did not reflect that the affairs of the companies were robust.

4. The Assessee appealed the assessment order dated 09.12.2018 before the learned CIT(A). However, the same was rejected by an order dated 10.06.2019. The learned CIT(A) upheld the assessment order dated 09.12.2018 and also surmised that the loss declared by the Assessee may be on account of entries provided by an entry provider and the transactions of purchase and sale of the equity shares were sham transactions.

5. The learned ITAT allowed the Assessee's appeal, *inter alia,* on the ground that the findings of the AO and the learned CIT(A) were not based on any cogent material.

6. Clearly, there is no material on record which would establish that the transactions in question were sham transactions. It is conceded that the transactions were executed through the Bombay Stock Exchange and the security transaction tax was paid on the said transactions. Absent any material to reflect that the transactions were sham transactions or what was apparently disclosed was not real, the losses claimed could not be

disallowed. Clearly, the fact that the SENSEX had gone up while some shares had dropped in value, cannot be the ground for disallowing the loss. It is puerile to assume that price of all listed shares must follow the fall and rise of the SENSEX.

7. The Revenue has projected the following questions for consideration of this Court:

> "A. Whether the Ld. ITAT has grossly erred in setting aside the Assessment Order dated 09.12.2018 on the ground that no "*benefit*" was derived to the Respondent-Assessee by booking an allegedly bogus Short-Term Capital Loss through sale of listed equity shares?
>
> B. Whether the Ld. ITAT has grossly erred in finding that the Appellant/Commissioner had failed to produce any material to demonstrate that the sale of the shares by the Respondent-Assessee was a bogus transaction which only sought to claim a Short-Term Capital Loss?
>
> C. Whether the Ld. ITAT has erred by allowing the Short-Term Capital Loss of INR 1,41,29,989/- as claimed by the Respondent-Assessee for AY 2016-17?

8. None of the aforesaid questions as projected can be considered as substantial questions of law, in the given facts. We find no infirmity with the decision of the learned ITAT in allowing the Assessee's appeal.

9. In view of the above, the present appeal is dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 8, 2024
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Click here to check corrigendum, if any