IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

ITR NO. 1 OF 2000

Date of Decision: 30.4.2008

The Commissioner of Income-tax, Shimla ……Petitioner

Versus

H.P. State Industrial Development Corporation Ltd
…. Respondent.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No.

For the Petitioner: ***Mr. Vinay Kuthiala & Ms. Vandana Kuthiala, Advocates.***

For the respondent : ***Mr. K.D. Sood, Advocate.***

Deepak Gupta, J(Oral)

The following question of law has been referred for the opinion of this Court under Section 256(2) of the Income Tax Act, 1961:

> "Whether on the facts and in the circumstances of the case, the ITAT was right in law in deleting the addition of Rs.96,38,630/- made on account of bad debts written off by the assessee acceding to the plea of the assessee that the claim must be allowed".

The assessee held shares in its subsidiary companies. It was dealing in the shares and all the authorities below have held that in the previous assessment years the assessee was showing profits from the sale of shares and paying tax on the said profit. Thereafter, the subsidiary company i.e. Himachal Worsted Private Ltd. was wound up in

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whether reporters of Local Papers may be allowed to see the Judgment? Yes

the year 1985. The assessee is a Government owned company and the subsidiary company was also a government owned company. The subsidiary company was wound up under the orders of the State Government since it has incurred heavy debts and had accumulated losses of more than Rs.3 crores. The winding up petition was allowed by a Company Judge of this Court on 19.5.1993. The assessee decided to write off the value of the shares held by it in the subsidiary company which was wound up. The Commissioner, Income Tax held that it was not feasible to revive the subsidiary company and the assessee had no other option but to write off the amount invested in the shares of the Company. In fact a decision to waive off the interest recoverable from the subsidiary company had already been taken on 27.7.1981. The Tribunal treated the shares of the assessee Corporation as stock in trade and held that since the subsidiary company has gone into liquidation there was no question of selling off the shares.

Shri Kuthiala urged that in fact there was no trading in the shares and therefore this amount could not have been allowed as a deduction. We are not in agreement with this contention. Once a Company has been ordered to be wound up there is no question of any party dealing in the shares of the said Company. The Tribunal has come to a finding of fact that the shares were stock in trade and has therefore, allowed the loss. The loss in our opinion has to be treated as a trading loss. The mere fact that the shares were not sold is of no significance since in fact the shares could not have been sold and had become worthless. The question is accordingly answered in favour of the assessee.

In view of the above discussion question referred to this Court is decided in favour of the assessee and against the Revenue. The Registrar General of this Court is directed to send a copy of this order to the Income Tax Appellate Tribunal.

(Deepak Gupta)
Judge

(Kuldip Singh)
Judge

April 30, 2008
(sks)