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

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**ITA 220/2015**

PR. COMMISSIONER OF INCOME TAX, DELHI-2 ..... Appellant  
Through: Mr. Shikhar Garg for Mr. Kamal  
Sawhney, Advocate.

versus

CONSOLIDATED FINVEST & HOLDINGS PVT.  
LTD. .... Respondent  
Through: None.

**CORAM:**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**  
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**  
**19.08.2015**

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1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the order dated 10<sup>th</sup> September 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 729/Del/2011 for the Assessment Year ('AY') 2006-07.

2. The Respondent Assessee filed a return for the AY in question on 13<sup>th</sup> November 2006 declaring an income of Rs.90,88,891. The case was picked up for scrutiny. In the AY in question, the Assessee which is a non-banking finance company ('NBFC') engaged in the business of investments, trading

of goods, loans and advances, claimed carry forward of a long term capital loss of Rs.41,81,03,448 on account of sale of 2% Redeemable Convertible Preference Shares ('RCPS') of Jindal Polyfilms Ltd. ('JPL'), one of the sister concerns of the Assessee. No Security Transaction Tax ('STT') was paid on the shares and they were not listed on any stock exchange.

3. The background to the above claim was that during the Financial Year ('FY') 2000-01, the Assessee had purchased 6,60,00,000 shares [Optionally Convertible Preference Shares ('OCPS')] of JPL at Rs.10 each at a premium of Rs.5 per share aggregating to Rs.99 crores against which a sum of Rs.66 crores was paid on account of OCPS capital and Rs.33 crores on account of premium. The 0% OCPS was converted into 2% RCPS with effect from 3<sup>rd</sup> March 2004. During FY 2005-06, the 2% RCPS were redeemed at a face value of Rs.10 each. The share premium amount was forfeited. The resultant loss after taxation was claimed as long term capital loss.

4. The ITAT has in the impugned order reversed finding of the Commissioner of Income Tax (Appeals) ['CIT (A)'] on this aspect and held that for AY 2001-02 when the loan was converted into OCPS, such conversion was not held to be a bogus or sham transaction. In the return for

AY 2002-03, the loss shown from the sale of the part of the OCPS was allowed and not held to be a bogus or a sham transaction. In AY 2004-05, the conversion of 0% OCPS into 2% RCPS was again not held to be bogus. It is only when the Assessee received the sum of Rs.50 crores on redemption of the RCPS in the AY under consideration, that the AO held the transaction to be bogus. The ITAT pointed out that with no significant event having taken place, except redemption of the 2% RCPS, there was no basis for the AO to have concluded that the entire transaction to be bogus. The ITAT further noted that the AO called for information from JPL under Section 133(6) of the Act but was unable to find any material to conclude that the transaction between the Respondent Assessee and the JPL was bogus.

5. Having heard the submissions of learned counsel for the Revenue and having perused the orders of the AO, CIT (A) and ITAT, the Court finds that the ITAT has given cogent reasons why in the facts and circumstances the transaction in question cannot be held to be bogus. The Court is unable to be find any perversity vitiating the said order.

6. No substantial question of law arises for determination.

7. The appeal is dismissed.

**S. MURALIDHAR, J**

**VIBHU BAKHRU, J**

**AUGUST 19, 2015/dn**