

## Transactions of unlisted shares of group concern at throw away prices wasn't genuine transactions

**Summary – The Delhi ITAT in a recent case of Leading Line Merchant Traders (P.) Ltd., (the Assessee) held that where assessee acquired shares of its own group company at Rs. 40 per share and then sold same to its own group company at a throw away price of 10 paise per share and both transactions being off-market as shares were not listed on any stock exchange in country, entire transaction was not genuine and assessee was not entitled to claim long-term capital loss on sale of shares**

### Facts

- The assessee was engaged in the business of trading of goods and land.
- The assessee claimed to have sold shares *inter alia* of 'P' at Rs. 10 per share which were subscribed by it at Rs. 40, being, face value of Rs. 10 and share premium of Rs. 30 per share. The assessee claimed long-term capital loss. To justify the said claim of loss, the assessee submitted that the shares of 'P' sold by it were independently valued by PWC at Rs. 10 per share and it was the same price at which the assessee sold such shares to 'A'.
- The Assessing Officer observed that 'A' was a shareholder of the assessee as well, which had entered into several sale and purchase transactions. The Assessing Officer opined that there was no reasonable basis to justify the sale of shares worth Rs. 3 crores for a sum of Rs. 75,000 only and, further, the transaction was not with an independent party at fair market value. He, therefore, disallowed long-term capital loss shown on the sale of shares.
- The Commissioner (Appeals) got convinced with the submissions advanced on behalf of the assessee and ordered for the deletion of addition.
- On second appeal:

### Held

- The assessee-company whose shares were apparently transacted and the alleged purchaser of shares are all related enterprises. On a specific query, the assessee admitted that shares of 'P', were subscribed to by the assessee on the basis of private placement and no public issue was brought out. This shows that the shares of 'P' were not listed on any stock exchange. When the facts and circumstances of the case is considered in entirety, namely, the assessee purchasing shares of 'P' for a sum of Rs. 40 and, then, selling such shares to 'A', at 10 paise per share and the further fact that all the companies are related to each other, the genuineness of the entire transaction in shares cannot be accepted. No material has been brought on record to indicate the net worth of 'P' justifying the issue price at Rs. 40 per share when the assessee-company subscribed to its shares. The assessee is harping on some valuation report of Pricewater House Coopers indicating the net worth of shares of 'P' at 10 paise per share at a gap of less than two years. This is clearly a façade created by the group companies amongst themselves to book loss into assessee's accounts with the ulterior motive. The

rationale in the assessee acquiring the shares of its own group companies at Rs. 40 per share and then offloading the same to its group company at a throw away price of 10 paise per share and both the transactions being off-market as the shares of 'P' are admittedly not listed on any stock exchange in the country cannot be understood.

- Adverting to the facts of the instant case, the Assessing Officer was fully justified in rejecting the genuineness of the transaction of purchase and sale of shares on the test of human probability. The entire story concocted by the assessee and its group concerns is aimed at defrauding the revenue with ulterior motive.