

C. I. T., Bihar and Orissa, Patna

Vs

Dalmia Jain & Co., Ltd.

Civil Appeals Nos. 1813, 1848 and 1849 of 1967

23.07.1971

JUDGMENT

HEGDE, J. –

All these appeals by certificate are by the Commissioner of Income Tax, Bihar and Orissa, against the same assessee, namely, Dalmia Jain & Co., Ltd. The point that arises for decision in these appeals is whether the loss incurred by the assessee in the sale of some shares held by it is a trading loss or a capital loss. There is no dispute that the assessee did incur loss by the sale of those shares. It is established that the assessee was dealing in shares. It is also established that in the previous years, such losses were given deduction too while computing the total income of the assessee. The Tribunal as well as the High Court have concurrently come to the conclusion that the loss in question is trading loss. The question whether a particular loss is a trading loss or a capital loss is primarily a question of fact. It is not the case the department that in arriving at its decision, the Tribunal has taken into consideration any irrelevant consideration or failed to take into consideration any relevant consideration. Hence, there is no room for interference by this Court. In the result, these appeals are dismissed. No costs.

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