

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.2128/Bang/2016
Assessment year : 2010-11

M/s. Samanvitha Securities Pvt. Ltd., No.2/3, Nanjappa Road, Shanthi Nagar, Bengaluru – 560 027. PAN: AAECS 9941B	Vs.	The Income Tax Officer, Ward 12(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri B. Chattarj, Advocate
Respondent by	:	Shri A.R.V. Sreenivasan, JCIT(DR)(ITAT) Bengaluru

Date of hearing	:	02.03.2017
Date of Pronouncement	:	22.05.2017

ORDER

This appeal is preferred by the assessee against the order of CIT(Appeals) *inter alia* on the following grounds:-

- “1. The order of the Ld CIT (Appeal) - 6, Bengaluru in the present case is opposed to law.
2. The Ld CIT (Appeal) erred both in law as well as in fact in denying to accept the legal principle established on the issue by her predecessor in office for the preceding year in the assessee's own case in terms of non-applicability of the principle of res-judicata.

3. The Ld CIT (Appeal) had misconceived the principle of res-judicata and erred in law in not considering the legal principles determined by the Honourable High Court and ITAT.

4. The Ld CIT (Appeal) erred both in facts as well as in law in not verifying the veracity of the observation of the Ld AO to the effect that the AR of the appellant had agreed to the proposal of treating the short term capital gains earned by the appellant as business income.

5. The Ld CIT (Appeal) erred both in fact as well as in law in not giving credence to the submission filed by the AR opposing the proposal to treat the short term capital gains earned by the appellant as business income.

6. The Ld CIT (Appeal) erred in facts as well as in law in not adjudicating the issue on the basis of submission made before her and underlined legal principles but relying solely on the observation of the AR .

7. The appellant craves leave to add/alter additional grounds during the course of hearing.”

2. The facts in brief borne out from the record are that during the course of assessment proceedings, it was noticed that assessee has admitted short term capital gain of Rs.40,00,853. The issue was examined by the AO and it was noticed that assessee has dealt with trading shares frequently and hence it was proposed to treat the said income as income from business. When the assessee was asked to explain the same, he has accepted that the same be treated as business income. Accordingly, the said amount of Rs.40,00,853 was brought to tax under the head income from business. Assessee has requested to set off the business loss for AY 2009-10 of Rs.6,37,494 and business depreciation loss of Rs.2,36,754 in

respect of its claim of Rs.8,13,960 in the computation of income. Since the said income is being treated as business income, it was allowed and accordingly income was revised.

3. Assessee preferred an appeal before the CIT(Appeals) with the submission that it kept shares as investment and has shown short term capital gain on its sale, but the AO has treated the same as business income. The CIT(Appeals) re-examined the nature of business of assessee and Memorandum of Association and noticed that the main business of the company is share broking. Being not convinced with the explanation of assessee, the CIT(Appeals) has treated the said income as business income and confirmed the order of AO.

4. Now the assessee is in appeal before the Tribunal and has filed the details of share holding and profit earned thereon. It was further contended that since the assessee has kept shares as investment, the profit earned thereon should be treated as short term capital gain. The CIT(Appeals) did not look into this aspect and has confirmed the addition.

5. The Id. DR placed reliance upon the order of CIT(Appeals).

6. Having carefully examined the orders of lower authorities and the documents placed on record, I find that assessee has filed the details of share holding wherefrom it is noticed that closing stock was of Rs.11,74,349.29 and sale effected was of Rs.22,63,986. During the course

of hearing, the Id. counsel for the assessee was asked to furnish the details of transaction to verify the frequency of transactions in order to examine whether assessee was engaged in trading of shares or holding shares as investment, but it was not filed. But from a careful perusal of a number of scripts and the companies to which it belongs and the quantum of transactions, it appears that assessee was holding shares as stock-in-trade and profit earned thereon should be a business profit. The onus is upon the assessee to establish that shares were kept as investment in the light of the fact that it is engaged in share trading business. But no evidence was filed in this regard, except oral statements. In these circumstances, I am of the view that the assessee is badly failed to establish that shares were kept as investment and not as stock-in-trade. I accordingly find no infirmity in the order of CIT(Appeals), who has rightly adjudicated the issue.

7. In the result, the appeal of assessee is dismissed.

Pronounced in the open court on this 22nd day of May, 2017.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 22nd May, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.