

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER  
AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

ITA No.1447/Del/2013  
Assessment Year : 2008-09

Rishi Sehdev,  
33, Chander Nagar,  
Janakpuri,  
New Delhi.  
PAN: AARPS2889Q

Vs. ACIT,  
Range-10,  
New Delhi.

(Appellant)

(Respondent)

Assessee By : Shri Tapas Ram Misra, Advocate  
Department By : Shri F.R. Meena, Sr. DR

Date of Hearing : 15.09.2016  
Date of Pronouncement : 16.09.2016

ORDER

PER R.S. SYAL, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 17.1.2013 in relation to the assessment year 2008-09.

2. The first issue agitated in this appeal is against treatment of Rs.78,99,513/-, being the amount of short-term capital gain arising from sale of shares as 'Business income' as against 'Capital gains' shown by the assessee.

3. Briefly stated, the facts of this issue case are that the assessee earned short-term capital gain of Rs.78,99,513/- from purchase and sale of certain shares through Portfolio Management Scheme (PMS). The same was treated by the assessee as income chargeable under the head 'Capital gains.' The AO, during the course of assessment proceedings observed that the shares of M/s Reliance Liquidity Fund were purchased 7 times in the month of January and sold on two occasions in the month of February. This scrip was purchased 15 times and sold on 26 occasions. Similarly in the month of March, the assessee purchased the shares of this scrip 8 times and sold them on 9 occasions. The details filed by the assessee divulged that the assessee purchased shares of M/s Reliance Liquidity Fund almost every month. Similarly, the assessee also traded through the year in the equity of Alfa Transformers Ltd.,

Apollo Tyres Ltd. Arro Webtex ECE Industries Ltd., EIH Ltd., Electronotherm Ltd., Elpro International Ltd., Himalaya International Ltd. IL &FS Investment Managers Ltd., India Infoline Limited, JMC Projects India Ltd., Modison Metal, Nonnet Ispat Ltd., NIIT Ltd. In the like manner, the shares of M/s Provogue (India) Ltd. were sold in the month of January on 16 occasions. Similarly, the shares of RPG Cables Ltd., were sold in the month of January on 13 occasions and purchased in the month of August, 2007 on 13 occasions. In the light of the above factual scenario, the AO came to hold that the assessee was doing shares trading like business dealings. He further observed that thousands of shares were purchased and sold by portfolio managers on behalf of the assessee in a very short span of time. Considering all these facts, the AO refused to accept the stand of the assessee in treating the income as short term capital gain. He treated this amount as 'Business income'. No relief was allowed in the first appeal.

4. We have heard the rival submissions and perused the relevant material on record. It is observed that conflicting views were prevalent

in the tribunal on the treatment of income from PMS. Whereas some Benches were holding the same as Capital gains, the others were treating it as Business income. A Special bench was constituted to resolve the conflict in the case of *Suraj Overseas (P) Ltd. vs. ACIT*. The Special Bench of the Tribunal has rendered its decision on 14.10.2015 in *ITA No.3827/Del/2009*. A copy of such order has been placed on record by the Id. AR. There is hardly any need to accentuate that the view taken by a Special Bench is binding on the Division Benches across the country unless there is a contrary decision available from the Hon'ble jurisdictional High Court. No Division Bench is competent to re-visit the legal position decided by the Special Bench so long as the facts and circumstances remain the same. As the Id. AR could not specifically point out any distinguishing feature in the facts of the Special Bench *vis-à-vis* the instant case and also the legal position, we refuse to entertain any argument contrary to the decision of the Special Bench. Under these circumstances, we set aside the impugned order and remit the matter to the file of the AO for deciding this issue in conformity with the view taken by the Special Bench in this case.

5. The only other issue is against the confirmation of disallowance of Rs.84,526/- made by the AO u/s 14A of the Act. The facts apropos this issue are that the assessee earned exempt dividend income of Rs.4,04,100/-. The AO computed the disallowance u/s 14A at ½% of the average value of investment at Rs.84,526/-. The ld. CIT(A) sustained the disallowance. The assessee is aggrieved before us.

6. Having regard to the facts of the instant case, we find that the ld. AR failed to point out any reasons for not making addition u/s 14A when the exempt income was admittedly earned by the assessee. We, therefore, hold that the authorities below were justified in making and sustaining this disallowance. The impugned order is upheld on this score.

7. In the result, the appeal is partly allowed for statistical purposes.

The order pronounced in the open court on 16.09.2016.

Sd/-

[BEENA A. PILLAI]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
ACCOUNTANT MEMBER

Dated, 16<sup>th</sup> September, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.