

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3301/Del/2014  
(Assessment Year: 2010-11)

DCIT, Circle-3(1), New Delhi	Vs.	Chowdry Associates, 4 <sup>th</sup> Floor, Punjabi Bhawan, 10 Rouse Avenue, New Delhi PAN:AAACC0387R
(Appellant)		(Respondent)

Revenue by :	Shri Subhash Verma, Sr. DR
Assessee by:	Shri MP Rastogi, Adv
Date of Hearing	11/10/2017
Date of pronouncement	28/12/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT(A)-VI, New Delhi dated 24.02.2014 for the Assessment Year.. 2010-11.
2. The revenue has raised the following grounds:-
  - “1. On the facts and in the circumstances of the case, the Id CIT(A) has erred in holding that disposal of shares at Rs. 11791104/- represented short term capital gain and not business income as held the AO.
  2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”
3. The brief facts of the case is that the assessee is a non-banking financial company trading in units of mutual funds and investment in shares and debentures. It filed its return of income on 30.09.2010 at Rs. 176323917/- which was revised on 28.03.2012 for Rs. 150990584/-. During the year assessee has earned short term capital gain of Rs. 11791104/- and long term capital gain of Rs. 450708239/- and the Id Assessing Officer asked that why the income from share should not be treated as business income. The assessee submitted a detailed reply vide letter dated 29.10.2012 which was rejected by the Id Assessing Officer relying on CBDT Circular No. 4/2007 dated 15.06.2007. Consequently, he held that short term capital gain of Rs. 11991104/- is business income of the assessee and consequently order u/s 143(3) was passed on 16.11.2012. Assessee preferred appeal before the Id CIT(A), who relying on the

decision of the coordinate bench in assessee's own case for Assessment Year 2005-06 to 2007-08 allowed the appeal of the assessee and therefore, revenue is in appeal before us.

4. The Id Departmental Representative relied upon the orders of the Id Assessing Officer and stated that while deciding the issue the magnitude, frequency, volume is required to be seen and therefore, decision of the Id CIT(A) relying on the judicial precedents is not acceptable.
5. The Id Authorised Representative submitted a paper book and submitted that issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for Assessment Year 2005-06 to 2007-08. He further submitted that in assessee's own case Hon'ble Delhi High Court has decided this issue in favour of the assessee on the identical facts and circumstances of the case.
6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The claim of the assessee is that profit earned by the assessee on sale of shares is chargeable to tax under the head "capital gain" and not "business income", whereas the argument of the revenue is otherwise. This issue has been decided in favour of the assessee by Hon'ble Delhi High Court in assessee's own case in ITA No. 544/2013 dated 30.01.2015, as well as by the coordinate benches from Assessment Year 2005-06 to 2008-09. The Id Departmental Representative could not bring any material on record to show that facts and circumstances of the case are different in this year compared to those years. Therefore, we do not find any infirmity in the order of the Id CIT(A) in holding that "short term capital gain" earned by the assessee is not chargeable as "business income". In view of this, respectfully following the decision of the High Court and coordinate benches in assessee's own case for earlier years we dismiss the solitary ground of appeal of revenue.
7. In the result, the appeal of the revenue is dismissed.
8. Order pronounced in the open court on 28/12/2017.

-Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:28/12/2017  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi