

आयकरअपीलीयअधिकरण , 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री एन.एस.आर.गणेशन, न्यायिक सदस्य एवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 371, 372 & 373/Mds/2017

निर्धारण वर्ष/Assessment Years : 1998-99, 1999-2000 & 2000-01

Smt. Chandra Ramesh,
No.2, Vijayaragahava Road,
T. Nagar,
Chennai – 600 017.

Assistant Commissioner of Income
Vs. Tax,
Non Corporate Circle -1(1),
Chennai.

[PAN: AAAPR 6568L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. R. Vijayarghavan, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. AsishTripathi, JCIT

सुनवाईकीतारीख/Date of Hearing

: 14.09.2017

घोषणाकीतारीख/Date of Pronouncement

: 08.12.2017

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed these appeals against the common order of the Commissioner of Income Tax (Appeals)-2, Chennai in ITA Nos. 148,241&20/CIT(A)-2/2013-14 dated 16.12.2016 for the assessment years 1998-99 to 2000-2001.

2. The assessee is a trader and dealer in shares besides having investments . Her assessment for ay 2000-2001 was made u/s. 143(3) on 31.3.2004, in which the AO disallowed , inter-alia, the provision for diminution being the difference between cost and market value of shares. The said addition was upheld by the CIT(A)-VI, Chennai vide order dt. 13.12.2004 and also by the Hon'ble ITAT, Chennai Bench "A", vide its order in ITA No. 708(Mds)/2005dt. 7.5.2008. Following this, the assessments for ays 1998-99 to 2000-01 were re- opened u/s. 147 and were completed bringing to tax (i) the provision for diminution in value of investment for ays.1998-99 & 2000-01 and (2) the loss in trading of scrips for which delivery has been taken for ay 1998-99 alone. The CIT(A)-VI, Chennai vide orders dt. 29.2.2008 has deleted these additionsfor all these years . On Revenue's appeals, the Hon'ble ITAT, Bench "C", Chennai vide order in ITA Nos. 1683 to 1686/Mds/2008 dt.5.2.2010 for ays. 1998-99, 1999-2000, 2000-01 & 2003-04, set aside the orders of the lower authorities qua these two issues and remitted them to the record of the Assessing Officer to give a concrete finding after verifying from the record that whether these investments shown by the assessee are purely for investments or it is only trading in the shares and instead of closing stock, the assessee is showing under the head "Investment" in the Balance Sheet. The Hon'ble ITAT has directed the Assessing Officer to decide the issue after considering all the contentions and objections of the assessee.

2.1 In adherence to the directions of the Hon'ble ITAT, the AO posted the cases for hearings on various dates. However, there was no response , whatsoever , from the assessee and finally, after informing the assessee that its absence for the said hearings would be inferred that it has no bonafide submissions to be made and it has no objections against the proceedings being finalized for these years on merits also , the cases remained unrepresented and hence the AO passed orders u/s.144 r.w.s. 254 on 23.12.2010 for all these ays on the lines of the original assessment Orders, excepting the relief provided by the Hon'ble ITAT. Aggrieved, the assessee filed appeals for these years before the CIT (A).

2.2 The CIT (A) after considering all the pleas and the material furnished by the assessee confirmed the additions/ disallowances on account of loss from trading in shares for which delivery has been made for a y 1998-99 and on account of provision for diminution in the value of shares for all the three a ys. i.e. ays. 1998-99 to 2000-01. Aggrieved , the assessee filed these appeals with following common grounds of appeal .

"1. The order of the learned CIT appeals is contrary to law and opposed to the facts of the case.

2. The learned CIT Appeals has erred in concluding that the shares held by the appellant constituted investments and not stock in trade.

3. The Learned CIT Appeals has erred in overlooking the fact that the appellant had by conduct treated the investments in shares as stock in trade only. The appellant had been offering the profit/losses on sale of shares as business income in all the years.

4. The Learned CIT Appeals has erred in concluding that merely because the shares were shown under "Investments" it was not stock in trade for the appellant.

5. The learned CIT Appeals had erred in overlooking the fact that CBDT vide its circular dated 29th February, 2016 instructed that wherever the assessee has chosen to treat investments as stock in trade it should not be interfered with and the same should be accepted. The appellant has been consistently valuing the investments at cost or market price whichever is lower and offering the profit/loss as business income only and not under "capital gains".

6. The appellant craves leave to alter/ file additional grounds of appeal."

3. The AR submitted the same submissions made before the CIT (A) and argued the case on the lines of grounds of appeal. The relevant portion is extracted from the order of the CIT(A) as under:

"4. The common ground in all the above appeals relates to the determination whether the appellant is engaged in the business of trading in shares. The appellant is an individual engaged in the business of trading in shares. She is an individual member of the Bangalore stock exchange and a corporate member of the NSE in professional category. The appellant has been consistently valuing all the shares held by her at cost or market value whichever is less as it represents the stock in trade. Every year at the year end the market value of the shares held by her would be ascertained and wherever it is lower than cost a provision is made for the fall in the value of her shares. The details of such provision made for the various years under appeal are as under:

Ay: 1998-99	Rs.1,58,333/-
Ay: 1999-00	Rs. Nil
Ay: 2000-01	Rs.9,46,713/-

The appellant had during the relevant years engaged in trading of shares as under:

<i>AsstYr</i>	<i>Purchase</i>	<i>Sales</i>
<i>1998-99</i>	<i>441319426</i>	<i>440079655</i>
<i>1999-2000</i>	<i>24085693</i>	<i>18750067</i>
<i>2000-2001</i>	<i>50609265</i>	<i>45310171</i>

The details of shares bought and sold during each year is enclosed in the Annexure-1. The appellant has been consistently valuing the shares as stated above and making a provision for diminution in value wherever required. The volume of trading in shares clearly indicates that the appellant's business is trading in shares. The appellant has all along been offering the profit/(loss) on sale of shares as business income only as under:

<i>31-03-98</i>	<i>(1243878)</i>
<i>31-03-99</i>	<i>(501015)</i>
<i>31-03-00</i>	<i>343379</i>
<i>31-03-2001</i>	<i>(303993)</i>
<i>31-03-2003</i>	<i>1776738</i>
<i>31-03-2005</i>	<i>159961</i>
<i>31-03-2006</i>	<i>1085562</i>

The CBDT vide circular' no 6/2016 dt 29/02/2016 has clarified that "where the assessee itself irrespective of the holding period of the shares opts to treat them as stock in trade, the income. "(copy of the circular enclosed)'

5. In the case of Commissioner of Income Tax (Central), Calcutta Vs Associated Industrial Development Company (P) Ltd (82 ITR 586), the Supreme Court observed that:

"Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment. "

The appellant has by her conduct of offering the profit/loss on sale of shares as business income and not as capital gains has clearly indicated that she is engaged in the business of trading in shares. The learned Assessing Officer had not provided sufficient opportunity to the appellant to establish the above facts.

For a particular asset to be treated as stock in trade the intension whether to make profit or earn dividends, frequency of transactions, and the treatment of the same in the books of accounts are the determinate factor. The appellant by consistently returning the profit/loss as business income, valuing the shares at cost or market price whichever is tower has clearly established that it is stock in trade. This is also supported by the fact that the appellant is a dealer, trader in shares which is proved by the frequency of transactions undertaken during these years.

In view of the above it is prayed that the order of the learned AO be set aside and relief as prayed for be granted. "

Per contra, the DR relied on the order of the CIT(A) and her findings .

4. We heard the rival contentions and gone through the relevant material.

The assessee has furnished a paper book, giving the breakup of investment for ays 1997-98 to 1999-2000 which is extracted as under:

"FY	1997-98	1998-99	1999-2000
	Rs	Rs	Rs
INVESTMENT			
CRFS	6550000	6550000	7500000
CRFO	6844940	6844940	6109940
CRSS	2081622	2081622	2081622
	15476562	15476562	15691562
Others-Stock			
In Trade	495586	5363069	3577876
(SIT)			
Total			
Incl S-I-T	15972148	20839631	19269438
Lower of			
CM/MP	337253	5363069	2631163
Provision	158333	158333	946713

and submitted that the investments shown under schedule F of the balance sheet comprises the value of stock-in-trade also. For example, the others-stock in trade in above table denotes the stock in trade. Thus, the assessee submits that though it is a wrong entry, the fact remains that the assessee was undertaking trade in shares and the closing stock of shares in trade was wrongly included in the investments, however, all her claims made in all these ays are verifiable with reference to purchases, sales of stock and its valuation etc. The AR invited our attention to page No. 9 to 28 of the paper book, specifically page Nos. 21 to 28 on the impugned issues. We have considered the assessee's reply and find that prima facia, the facts associated with the issues require proper verification and due decision. In view of the above facts and circumstances, we deem it fit to set aside the impugned issues to the AO for a fresh examination. The AO shall afford adequate opportunity to the assessee to lay the relevant materials in support of her contention and after affording adequate opportunity, shall pass speaking orders in accordance with law. The appeals filed by the assessee for ays 1998-99 to 2000-01 are treated as allowed for statistical purposes.

5. In the result, the assessee's appeals in ITA Nos371, 372 & 373/Mds/2017 are treated as allowed for statistical purposes.

Order pronounced on Friday, the 08th day of December, 2017 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 08th December, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF