

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA**

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 1042/Kol/2015

Assessment Year: 2006-07

M/s. P.P. Suppliers & Agencies Pvt. Ltd.....Appellant
2, Hare Street,
Nicco House, 3rd Floor,
Kolkata - 700 001
[PAN: AABCP 6085 C]

D.C.I.T., CIR - 2, Kolkata.....Respondent
Aayakar Bhawan, 3rd Floor,
P-7, Chowringhee Square,
Kolkata - 700 069

Appearances by:

Shri M. Satnaliwala, FCA appearing on behalf of the Assessee.

Shri Arindam Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : December 14, 2017

Date of pronouncing the order : January 19, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 5, Kolkata dated 30.06.2015 whereby he upheld the action of the Assessing Officer treating the profit earned by the assessee from share transactions as business income instead of short term capital gain.

2. The assessee in the present case is a non-banking finance company. The return of income for the year under consideration was filed by it on 29.12.2006 declaring a total income of Rs. 25,12,696/-. In the said return, the profit on sale of units of mutual funds as well as quoted and unquoted equity shares amounting to Rs. 25,79,026/- was shown by the assessee as short term capital gain. According to the

A.O., the activity of purchase and sale of shares and units was carried on by the assessee in a systematic and organized manner and there were numerous transactions of purchase and sale of units and shares made by the assessee during the year under consideration. He accordingly held that these frequent transactions carried on by the assessee were in the nature of business activities and the profits arising to the assessee from the said transactions was chargeable to tax as its business income and not capital gains. He accordingly brought to tax the entire net profit of Rs. 25,79,026/- earned by the assessee from purchase and sale of units and shares in the hands of the assessee under head profits and gains of business and profession in the assessment completed under section 143(3) vide an order dated 24.12.2008.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and since the Ld. CIT(A) did not find merit in the submissions made on behalf of the assessee company that the profits from the transactions in shares and units represented its short term capital gains, he proceeded to uphold the action of the A.O. in treating the said profit as business income of the assessee for the following reasons given in paragraph no 5 and 6 of his impugned order:

"5. From the submission it is seen that units/shares were purchased and sold within a few days of the acquisition of some of the shares or units. These shares/units were acquired through IPO and some of them have been sold within a few days of the offer from the relevant companies. No tabular details have been furnished in course of appeal. Some ledgers being investments in shares and short term gain have been furnished in appeal stage. From the papers filed the breakup of own funds or loans utilized by the appellant cannot be ascertained. The AR has relied on several decisions for claiming that the gains should be treated as short

term capital gain. Even the A.R has not clearly shown in the submission or through enclosed papers as to how much was the volume of purchases and sales and what are other activities undertaken by the appellant in the relevant year. It is therefore, difficult to appreciate the points pressed by the appellant. Decisions can be cited both in support of or against the action of the AO. But before pointing out how the AO is incorrect, the appellant should have first brought to the undersigned relevant details. From copy of DMAT statement filed it appears that some of the shares have been sold immediately after the allotment/purchase as shown below:-

<i>Name of the Bank</i>	<i>Date of delivery for sale or transfer</i>	<i>Allotment / purchase date</i>
<i>BOB</i>	<i>03.03.2006</i>	<i>03.02.2006</i>
<i>Entertain Network</i>	<i>17.02.2006</i>	<i>11.02.2006</i>
<i>Indo Tech</i>	<i>17.03.2006</i>	<i>11.03.2006</i>
<i>Kazaria Ceramics</i>	<i>27.10.2006</i>	<i>06.10.2006</i>
<i>Mahindra & Mahindra Financial</i>	<i>20-22.03.2006</i>	<i>10.03.2006</i>
<i>Reliance Industries</i>	<i>13.02 to 07.03.2006</i>	<i>05.01 to 18.02.2006</i>

6. From the above table, it does appear that the shares have been sold immediately after the purchase. From the pattern of holding in respect of shares allotted through IPO it does appear that there was no intention to hold on to the shares for relatively longer time as one would expect in cases of investments, in respect of the above shares therefore, the intention was to earn short term profit. I therefore, do not see how the AO's order can be changed as prayed through the grounds of appeal. The assessment order should have been more speaking on relevant facts. But the appellant also has failed to put across the relevant facts in support of its claim that the gains should be held as short term capital gain. I therefore, do not allow the grounds raised in respect of the said treatment by the A.O. of the gains as business profit. The grounds from No. 1 to 5 are therefore, not allowed.

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. The learned counsel for the assessee at the outset invited our attention to the copy of the relevant schedule of the balance sheet of

the assessee company as on 31.03.2006 to show that all the shares and units held by it were shown in the books of account as investment. He also invited our attention to the details of relevant transactions in units and shares entered into by the assessee given at page no 19 of the Paper Book to show that there were only 11 such transactions entered into by the assessee during the year under consideration involving purchase and sale of units and shares. He contended that shares and units held by the assessee company were consistently shown as investment in the earlier years and the said treatment was accepted by the A.O. He further contended that even the profit and sale of units and shares was declared by the assessee company as short term capital gains in the earlier years and the same was also accepted by the A.O. He submitted that this stand taken by the assessee in the earlier years and accepted by the department however was changed by the authorities below during the year under consideration and the rule of consistency was not followed merely on the basis of period of holding of units and shares before their sale, which was short. Relying inter alia on the decision of Hon'ble Supreme Court in the case of CIT vs Gopal Purohit 336 ITR 287, he contended that the facts and circumstances being similar, rule of consistency ought to have been followed by the authorities below.

5. The learned DR, on the other hand, strongly relied on the orders of authorities below in support of the revenue's case on the issue under consideration.

6. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that the shares

and units held by the assessee company were treated as investment in its books of accounts in the earlier years as well as in the year under consideration. The profit from purchase and the sale of said units and shares was offered to tax by the assessee under the head 'capital gains' in the earlier years as well as in the year under consideration. As contended by the learned counsel for the assessee, the treatment given by the assessee company for the units and shares held by it as investment and profit arising from purchase and sale thereof as capital gain was consistently accepted by the department in the earlier years. In the case of Gopal Purohit (supra), the assessee had followed a consistent practice in regard to the nature of the activities, the manner of keeping records and the presentation of shares as investment at the end of the year and the same was accepted by the department in all the earlier years. In the relevant year, the revenue however took a different view and justified the same by contending that the principle of res judicata was not attracted since every assessment year was separate in itself. The Tribunal, however, held that there ought to be uniformity in treatment and consistency when the facts and circumstances are identical, particularly in the case of the assessee. This approach of the Tribunal was accepted by the Hon'ble Bombay High Court and even SLP filed by the department against the judgment of the Hon'ble Bombay High Court was dismissed by the Hon'ble Supreme Court. In the present case, all the material facts relevant to the issue under consideration are stated to be similar to that of the earlier years wherein the treatment given by the assessee was consistently accepted by the department and this being the undisputed position, we are of the view that the profit of the assessee company from

purchase and sale of units and shares should be charged to take in its hand as short term capital gain by following the rule of consistency as held by the Hon'ble Supreme Court in the case of Gopal Purohit (supra). In that view of the matter, we set aside the impugned order of the Ld. CIT(A) on this issue and direct the A.O. to charge the profit from purchase and sale of units and shares to tax in the hands of the assessee company as short term capital gain.

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

Order Pronounced in the Open Court on 19th January, 2018.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 19/01/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. P.P. Suppliers & Agencies Pvt. Ltd., 2, Hare Street, Nicco House, 3rd Floor, Kolkata – 700 001.
2. D.C.I.T. CIR - 2, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata