

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1922/AHD/2015
(Assessment Year: 2011-12)**

Karan Discretionary Family Trust 722, Spring Valley, Nr. Rajpath Club, S.G. Highway, Ahmedabad-380051	V/S	The Deputy Commissioner of Income Tax Circle-6, Ahmedabad
(Appellant)		(Respondent)

PAN: AAATK3208N

**Appellant by: Shri S. N. Soparkar & parin Shah, AR
Respondent by : Shri Rajesh Meena, Sr.D.R.**

(आदेश)/ORDER

Date of hearing : 08 -02-2018
Date of Pronouncement : 14-02-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. This appeal by the Assessee is preferred against the order of the Ld. CIT(A)-4, Ahmedabad dated 01.06.2015 pertaining to A.Y. 2011-12.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the stands taken by the A.O. regarding assessing business loss of Rs. 17,53,206/- under the head Short Term Capital Gain.
3. During the course of the scrutiny assessment proceedings, the A.O. noticed that the assessee has disclosed loss of Rs. 17,53,206/- on trading in shares. The A.O. was of the firm belief that the same should have been offered under the head capital gains. The A.O. treated the said loss under the head capital gains.
4. Aggrieved by this, the assessee carried the matter before the ld. CIT(A) but without any success.
5. Before us, the ld. counsel for the assessee vehemently stated that since past many years, the assessee is maintaining two portfolios :(i) for investment in shares and (ii) as trading assets.
6. It is the say of the ld. counsel that while confirming the assessment, the ld. CIT(A) has wrongly interpreted the decision of the Tribunal in assessee's own case for A.Y. 2006-07 to A.Y. 2009-10. The ld. counsel pointed out that in the said judgment, the Tribunal has accepted that the assessee can legitimately maintained two portfolios one for investment and one for trading and any profit for the investment portfolio must be taxed under the head capital gains. The ld. counsel concluded by saying that there is no denial that the assessee is having two portfolios but the loss incurred by the assessee during the year under consideration is from trading stock of shares and therefore the same should be allowed as business loss.

7. Per contra, the ld. D.R. strongly supported the findings of the A.O.
8. We have given a thoughtful consideration to the orders of the authorities below. Exhibit 14 is the balance sheet of the assessee from which it can be seen that the assessee has shown investments to the tune of Rs. 107.100 lacs. It can also be seen that the assessee has shown inventories at Rs. 26491838/-. The income from trading in shares have been computed as under:-

<i>Sales</i>		<i>38,458,988</i>
<i>Less: Cost of Sales</i>		
<i>Opening Stock</i>	<i>2,165,265</i>	
<i>Add: Purchases</i>	<i><u>64,538,767</u></i>	
	<i>66704032</i>	
<i>Less: Closing Stock</i>	<i><u>26,491,838</u></i>	<i><u>40,212,194</u></i>
	<i>Total Rs.</i>	<i><u>(51,753,206)</u></i>

9. A perusal of the afore-stated facts clearly shows that the loss is on account of trading stock and therefore the same should be treated as business loss. We accordingly set aside the findings of the ld. CIT(A) and direct the A.O. to treat the loss of Rs. 17,53,206/- as business loss of the assessee.
10. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in Open Court on 14- 02- 2018

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER **True Copy**
Ahmedabad: Dated 14/02/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER