

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 171/Kol/2016

Assessment Year : 2006-07

I.T.O, Ward-12(1), KOLkata

-vs-

M/s Nupur Carpets Pvt. Ltd.

[PAN: AABCN 0170 A]

(Appellant)

(Respondent)

For the Appellant : Shri Sallong Yaden, Addl. CIT

For the Respondent : Shri S. Jhajharia, FCA

Date of Hearing : 13.02.2018

Date of Pronouncement : 07.03.2018

ORDER

Per M.Balaganesh, AM

1. . This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-4, Kolkata [in short the Id CIT(A)] in Appeal No.685/CIT(A)-4/Circle-12/Kol/14-15 dated 27.11.2015 against the order passed by the DCIT, Circle-12, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 26.12.2008 for the Assessment Year 2006-07.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in treating the income from sale of shares as Long Term Capital Gains (LTCG) and Short Term Capital Gains (STCG) as the case may be , in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee filed its return of income for the Asst Year 2006-07 on 30.11.2006 declaring total income of Rs 79,34,220/-. The assessee is an investment company dealing in carpets , garments, stocks and shares. The Id AO

observed that the assessee has shown considerable income from profit on sale of investment which the assessee has shown as LTCG and STCG. The Id AO observed that the same has been shown against numerous sale and purchase transactions of mutual funds / shares through own investment / off market sale and through Kotak Portfolio Management Service. In view of numerous transactions, the Id AO asked the assessee to justify as to why the profit on sale of shares was not to be treated as business profits. In response the assessee replied that it is a non-banking financial company, earning interest income from advancing of loans, investments and deposits with bank. It also earns dividend income from investment in shares and securities. During the year under appeal, the assessee company had claimed business loss at Rs 19,40,817/- as well as capital gain of Rs 98,35,801/- and LTCG of Rs 1,38,27,474/-. It was replied that the shares were held by assessee as investment only in the audited accounts and hence the gain has to be assessed as capital gains only and it has only one portfolio. All the investments were made out of assessee's own funds and no amount was borrowed for making investments. The assessee in support of its arguments placed reliance on various decisions of High Courts and Tribunals. The Id AO on perusal of the objects in the Memorandum of Association of the assessee company concluded that the buying and selling of shares is one of the primary objects of the company and the same was carried out in a systematic and organized manner by the assessee by way of numerous transactions. Moreover, the holding period of shares were very less and accordingly he concluded that the motive of assessee while buying and selling these shares were only to earn profits. Hence based on frequency of transactions and minimum period of holding, he concluded that the profits on sale of shares are to be assessed only as business income in the sum of Rs 1,63,88,559/-.

4. The Id CITA treated the gains arising on sale of shares as LTCG and STCG depending upon the period of holding as against business income treated by the Id AO, by placing reliance on the decision of this tribunal in assessee's own case for the Asst

Year 2005-06 in ITA No. 783/Kol/2009 dated 1.7.2015. The Id CITA however held that if there was any incidence of conversion of stock in trade into investment, the same is to be treated as business income.

5. Aggrieved, the revenue is in appeal before us on the following grounds:-

1. That on the facts and circumstances of the case the Ld. CIT(A) has erred by ignoring that the assessee was carrying out share transactions in good volume, frequently, systematically and in organized manner with a set goal then whether the profit arising out of such share transactions amounts to business profit or capital gain out of investments.

2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred by ignoring that the assessee has carried out its activities of share transactions in a systematic and organized manner and effected sale of shares at an opportune moment and arranged the transaction as per its own whims and fancy in its books of accounts to lower the tax incidence.

3. That the appellant craves leave to add/alter/modify the grounds of appeal before or at the time of hearing.

6. The Id DR vehemently relied on the order of the Id AO. In response to this, the Id AR stated that the issue under dispute is covered by the decision of this tribunal in assessee's own case for the Asst Years 2005-06 vide order dated 1.7.2015 and for Asst Year 2007-08 vide order dated 10.1.18. He stated that there was no conversion of stock in trade into investment and hence there is no question of assessing any business income.

7. We have heard the rival submissions. It is not in dispute that the assessee during the year under appeal was having only investment portfolio in its balance sheet. The assessee has been consistently showing these shares and mutual funds under Investments in its balance sheet. We find that the issue under dispute is covered in

favour of the assessee in Asst Year 2005-06 in ITA No. 783/Kol/2009 dated 1.7.2015 wherein it was held that:-

“We have gone through the ledger accounts of the assessee for the assessment year 2005-06 under consideration and noticed separate ledger accounts in respect of conversion of stock-in-trade into investment. By converting the stock-in-trade into investment, it does not alter the character, nature and intention of that particular transaction especially in the context of capital gain versus business income. By bringing in stock-in-trade under the head investment the assessee could reduce the tax incidence considerably. The activity of ‘trading in shares’ carried out separately in the assessment year 2004-05 and again brought forward to be continued in the next assessment year i.e. 2005-06 under the head ‘investment’ is to be considered as trading activity only. Subsequent conversion and treatment given in the books of accounts do not alter the character of commercial transaction. Accordingly, the profit that has been attributable to this trading activity corresponding to conversion of stock-in-trade into investment is to be treated as ‘business income’ and accordingly to be taxed. In view of the above findings of Ld. CIT(A) that the income from investment is to be taken as ‘capital gains’ and conversion of stock-in-trade into investment is to be taken as ‘trading income’, which is based on facts of the case and need no disturbance. Accordingly, we confirm the findings of Ld. CIT(A).”

Respectfully following the same, we hold that the profit on sale of shares and mutual funds could be assessed only as capital gains (LTCG and STCG) depending upon the period of holding. Accordingly the grounds raised by the revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 07.03.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 07.03.2018

SB, Sr. PS

ITA No.171/Kol/2016
M/s Nupur Carpets Pvt. Ltd.
A.Yr.2006-07

Copy of the order forwarded to:

1. I.T.O., Ward-12(1), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
2. M/s Nupur Carpets Pvt. Ltd., 23C, Ashutosh Chowdhury Avenue, Kolkata-700019
3. C.I.T(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches