

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.3163/CHNY/2017
निर्धारण वर्ष /Assessment year : 2013-2014.

Smt. Anita Kumaran,
No.10, Royal Enclave,
Besant Avenue, Adyar,
Chennai 600 020.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 15(1)
Chennai.

[PAN AAFPA 3255N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. G. Baskar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. Vijaya Prabha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 11-04-2018
घोषणा की तारीख /Date of Pronouncement : 03-05-2018

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in this appeal filed against an order dated
29.09.2017 of Id. Commissioner of Income Tax (Appeals)-15, Chennai,
has raised the following grounds:-

*1. The order of the Commissioner of Income Tax (Appeals)
{CIT (A)}, as they pertain to the issues contested in this appeal,
is opposed to law and facts and circumstances of the case.*

2.1 The CIT(A) erred in confirming the order of the Assessing

Officer (AO) in assessing the long term capital gain admitted by the appellant, as business income.

2.2 The CIT(A) erred in rejecting the case laws cited by the appellant as not applicable. without even analysing them. The CIT(A) failed to appreciate that none of the cases relied in his order, apply to the facts of the appellant's case.

2.3 The CIT (A) failed to appreciate that generally every investment made by any person is always with an intention to make a profit, but, this reason does not obliterate its character as an investment and that to classify a transaction as business, the motive was required to be tested on the basis of several factors.

2.4 Even when a particular item of income falls under two heads of income u/s 14, it has been held that the assessee has the right to choose the head of income which imposes lower liability of payment of tax. This ground is without prejudice to the stand that the income admitted is assessable only as long term capital gain.

3.1 The CIT (A) erred in confirming the disallowance made u/s 14A, without appreciating that in the facts and circumstances of the appellant's case, the provisions were not applicable.

3.2 In any event the CIT(A) ought to have excluded those assets which have not yielded any exempt income this year from the computation of disallowance u/s.14A r.w.r.8D

4. For these and other grounds that may be urged at the time of hearing, the appellant prays that the orders of the Assessing Officer and the CIT(A), on matters urged herein, may be quashed.

Ground No.1 & 4 are general in nature needing no specific adjudication.

2. Vide its ground No.2, assessee is aggrieved on capital gains arising from sale of shares being treated as business income.

3. Facts apropos are that the assessee an individual having income from salary, capital gains and other sources had filed her return of income for the impugned assessment year disclosing income of ₹4,77,92,220/-. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had sold substantial quantum of equity shares during the relevant previous year. Assessee was put on notice on why the capital gains claimed by her should not be treated as business income. Reply of the assessee was that she had acquired these shares with a long term objective of enjoying capital appreciation. As per the assessee, she had not treated the shares as trading asset but only as an investment. Contention of the assessee was that the equity shares were acquired long back and always valued at cost in her balance sheets. Relying on CBDT Circular No.4 of 2007, dated 15.06.2007, assessee argued that she could maintain a profile for trading and a profile for investments. As per the assessee, there was no intention for doing any business of trading in shares.

4. The Id. Assessing Officer did accept the above reply of the assessee. According to him, assessee was an angel investor or a venture capitalist. As per the Id. Assessing Officer, assessee was trading in shares with an intention of maximizing profit and the frequency of purchase and sale was immaterial. Conclusion of the Id.

Assessing Officer was that shares held by the assessee were much higher when compared to the sale thereby proving her status as an angel investor or venture capitalist. He thus held that assessee was doing a business of trading in shares and what was claimed as capital gains was nothing but business income.

5. Assessee assailed the above treatment of sale of shares in her appeal before the Id. Commissioner of Income Tax (Appeals). However, Id. Commissioner of Income Tax (Appeals) confirmed the order of the Id. Assessing Officer observing that the sole intention of the assessee was to maximize the profit on sale of shares and the activity had all attributes of an adventure in the nature of business. Reliance was placed on the judgment of Hon'ble Apex Court in the case of *CIT vs. Sulej Cotton Mills Supply Agency Ltd*, 100 ITR 706, *Dalhousie Investment Trust Co. Ltd. vs. CIT*, 68 ITR 486 and *Sardar Indra Singh & Sons Ltd vs. CIT*, 24 ITR 415.

6. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee had invested in the equity shares of various companies about five to six years back. According to him, the only sales effected by her during the relevant previous year was of shares in M/s.Planet Online Private Limited that too in one lot. As per the Id. Authorised

Representative, there were no other sale or purchase of shares during the relevant previous year. Contention of the Id. Authorised Representative was that assessee, like any other ordinary person, decided to sell the shares when the price were high and this by itself would not be sufficient to hold that assessee was in a business of dealing in shares. According to him, assessee had no intention to trade in shares at the time of purchase and the shares were acquired only as investment for making long term capital gains. Thus, as per the Id. Authorised Representative, treatment of capital gains as business profits by the lower authorities was unjustified.

7. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that assessee was an angel investor or venture capitalist. According to her, assessee was investing in new companies and selling such shares when its prices went up. Thus, according to her, assessee was rightly treated as an angel investor and gains considered as business profits.

8. We have considered the rival contentions and perused the orders of the authorities below. Investments of the assessee in equity shares is set out in Schedule V of her balance sheet and this is reproduced hereunder:-

Schedule – V
Investment in Companies and Others. (Amount in ₹)
Shares

	As on 31.3.12	As on 31.3.13	As on 31.3.14
Aniksha Productions Ltd	102,000	102,000	102,000
Earth Sense Agro Product Pvt. Ltd (Healing Medicaids Pvt. Ltd)	110,000	110,000	110,000
Earth Sense Ventures Pvt. Ltd (Thinakaran Publications (P) Ltd)	100,000	100,000	100,000
Earth Sense Recycle Pvt. Ltd	10	10	10
G.J. Multiclave Private Ltd	1,430,000	1,430,000	1,430,000
KGS Constructions Ltd.	10	10	10
KGS Developers Ltd	19,125,000	19,125,000	19,125,000
KGS Engineering Ltd	10	10	10
KGS Aranmulla International Airport	17,000	17,000	17,000
KGS Infrastructure Ltd	106,250	106,250	106,250
Medilink Enterprises Pvt Ltd (inclusive of share premium)	99,990	99,990	4,368,400
Nagsum Ceremics (P) Ltd	100,000	100,000	100,000
Nelson Coir Products P. ltd(inclusive of share premium)	2,250,000	2,250,000	10,900,000
KGS Nelson Paper Mill Ltd	10,000	10,000	10,000
Planet Online	35,600,000	----	----
Sarva Subitcham Finance Ltd	2,650	2,650	2,650
Solar paper mill Ltd	1000	1000	1000
	59,053,920	23,453,920	39,372,330
Share Application Money			
Medlink Enterprises Pvt. Ltd	681,000	681,000	----
Coir Products P Ltd	8,650,000	8,650,000	----
	9,331,000	9,331,000	----

What we find is that the investment remained the same during the relevant previous year except for the sale of shares of M/s.Planet Online Private Limited which was done in one lot. No doubt, one transaction might be sufficient to prove an adventure in the nature of trade. However, nothing has been brought before us by the Revenue to justify the view taken by the lower authorities that assessee was an angel investor or venture capitalist. This was a mere presumption taken by the Id. Assessing Officer. In our opinion, the period of

holding of shares and sales thereof which were far and few show that assessee was like any other ordinary investor who had chosen to sell when the prices were high. The transaction considered by the lower authorities as business activity was a solitary one in one lot. This in our opinion clearly suggest that assessee was only a investor not a trader. We are of the opinion that Id. Assessing Officer ought not have treated the capital gains arising from sale of shares as business income. Orders of the lower authorities on this issue is set aside. Ground No. 2 of the assessee is allowed.

9. Vide its ground No.3, grievance raised by the assessee is on a disallowance made u/s.14A of the Income Tax Act, 1961 (in short "the Act") which was confirmed by the Id. Commissioner of Income Tax (Appeals).

10. Ld. Counsel for the assessee submitted that assessee had earned no dividend whatsoever during the relevant previous year. According to the Id. Authorised Representative, assessee had only earnings from mutual funds. As per the Id. Authorised Representative, such dividend from mutual funds was claimed as exempt u/s.10(35) of the Act. Contention of the Id. Authorised Representative was that disallowance u/s.14A of the Act, if it all it was to be made, ought have been with reference to the investment of the assessee in the mutual

funds and not with reference to the investment of the assessee in equity shares, which did not yield any dividend.

11. Per contra, Id. Departmental Representative submitted that once the assessee had claimed exempt income, Section 14A of the Act had to be applied automatically. According to her, it was not necessary that all investments should have earned income for applying Section 14A of the Act. As per the Id. Departmental Representative, the disallowance was rightly done by the lower authorities.

12. We have considered the rival contentions and perused the orders of the authorities below. Computation of income filed by the assessee alongwith her return has been placed at paper book, page no.2. It clearly show that assessee had claimed exemption u/s.10(35) of the Act on dividend income earned from mutual funds. The claim was for a sum of ₹6,07,723/-. As against this, Id. Assessing Officer had worked out the disallowance required u/s.14A of the Act as under:-

Amount of expenditure by way of interest X the average of value of investment
The average of total assets

= Nil

(iii) An amount equal to one half per cent of the average of the value

= 6,30,84,920 (6,83,84,920 + 5,77,84,920 / 2) X 0.5%

= 3,15,425/-

Total disallowance u/s.14A - (i) + (ii) + (iii)

= 0 + 0 + 3,15,425 = ₹3,15,425/-.

Thus amount of ₹3,15,425/ is disallowed and added to the total income.

Investments considered by the Id. Assessing Officer for applying Rule 8D (2)(iii) were gross including value of shares which did not yield any dividend income. Mutual funds investments of the assessee was only ₹50,00,000/- as on 31.03.2013. In the circumstances of the case, we are of the opinion that the matter requires a fresh look by the Id. Assessing Officer. We therefore set aside the orders of the lower authorities and remit the issue back to the Id. Assessing Officer for consideration afresh in accordance with law. Ground No. 3 of the assessee is allowed for statistical purpose.

13. In the result, the appeal of the assessee is allowed pro-tanto.

Order pronounced on Thursday, the 3rd day of May, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:3rd May, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF