

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1673/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2013-14

Mr.Murugesan Chellappa,  
#10/38, Sarojini Street,  
T.Nagar,  
Chennai-600 017.

**Vs.** The Income Tax Officer,  
Corporate Ward-3(4),  
Chennai-34.

**[PAN: AAEPCL4591L]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.R.Vijayaraghavan, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.M.S.Nethrapal, JCIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2019

घोषणा की तारीख /Date of Pronouncement

: 16.09.2019

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee directed against the Order of the Commissioner of Income Tax (Appeals)-11, Chennai, dated 31.01.2018 for the AY 2013-14.

2. At the outset, there was a delay of 28 days in filing of the present appeal. The assessee has filed a petition stating that the delay has occurred on account of the advice given by the Chartered Accountant to

file a rectification petition before the Ld.CIT(A). However, on the advice of another Sr.Chartered Accountant, the appeal was filed before the Tribunal with the delay of 28 days. He submitted that the delay was on account of pursuit alternative remedy which constitutes the reasonable cause for delay in filing of the appeal. On the other hand, the Sr.DR has not raised any serious objection in condoning the delay. In these circumstances, we condoned the delay of 28 days in filing of the appeal and proceed to dispose of the appeal on merits.

**3. The assessee raised the following grounds of appeal:**

*1. For that the order of the Commissioner of Income-tax (Appeals) 11, Chennai is contrary to law, facts and circumstances of the case and is opposed to the principles of natural justice.*

*2. For that the appellant had diligently declared the Long-term Capital Gains on sale of Equity Shares held for more than one year as exempt income in the financials filed for the year covered under this Appeal for which he is entitled for the exemption U/s.10(38) of the Act.*

*3. For that the Appellant had submitted the details relevant treating the equity shares as investment during the assessment proceedings along with the evidences in support of the claim of Long Term Capital Gains arose on sale of Shares as per the provisions of section 112 of the Income Tax Act, 1961.*

*4. For that the assumption of the Ld. AO as well the CIT (Appeals) relying on the errors in the statement which was contrary to the facts and the provisions of Income-tax Act, 1961.*

*5. For that the CIT (Appeals) had further assumed that the entire capital gains as profit earned on sale of shares disregarding the fact, that the investment was made and held equity shares for more than one year.*

*6. Without prejudice to the above, the appellant prays that investment in equity shares as short term investment and the gains as Short Term gains and subject to income tax thereon accordingly.*

*7. For that the Appellant objects towards levy of Interest U/s.234 B of the Income tax Act, 1961.*

*8. For these grounds and such other ground that maybe adduced before or during the hearing of the appeal with the leave of this respectful authority, may be pleased to*

*a) Allow the exemption U/s.10(38) of the I T Act, 1961 on the Long Term Capital gains of Rs.4,81,80,386/-; OR*

*b) Treat the capital gains as Short term capital gains on sale of equity shares of Rs.4,81,80,386/-; OR*

*c) Pass such other orders as this respectful authority may deem fit.*

**4.** Briefly the facts of the case are that the assessee is an individual deriving income from investments. The return of income for the AY 2013-14 was filed on 29.09.2013 disclosing income of Rs.4,65,400/-. Against the said return of income, the assessment was completed by the AO vide order dated 29.03.2016 passed u/s.143(3) of the Act denying the exemption u/s.10(38) in respect of the long term capital gains by holding that the assessee is only a trader in the shares.

**5.** Being aggrieved by the action of the AO, an appeal was preferred before the Ld.CIT(A) who vide impugned order confirmed the action of the AO by holding that the assessee itself had shown the value of investments as stock in trade and the Circular No.6/2016 issued by the CBDT is not applicable.

**6.** Being aggrieved, the assessee is before us in the present appeal. The Id.Counsel for the assessee submitted that in view of the beneficial Circular No.6/2016 dated 29.02.2016 issued by the CBDT, the transaction of acquisition of shares should be treated as investment where the assessee held his shares for a period of more than 12 months immediately preceding the date of the sale. Thus, the capital gains arising on sale of such shares should be exempted u/s.10(38) of the Act. On the other hand, the Sr.DR submitted that the assessee himself had shown the purchase of shares as stock in trade and therefore, the above Circular cannot be applied to the facts of the present case.

**7.** We heard the rival contentions and perused the materials placed on record.

**8.** The only issue involved in the present appeal is whether the transaction of purchase of shares by the assessee is to be considered as investment or stock in trade. The AO gave finding vide Page No.3 of his Assessment Order that the transaction of purchase by the assessee were shown as stock in trade. The AO further observed that the purchase of shares was debited to the P&L A/c. However, this was explained that this was an accounting error. However, no evidence was filed to show that the contention of the assessee is only to hold the shares as capital asset not as stock in trade. The Circular No.6/2016 dated 29.02.2016 specifically states that where the assessee itself opts to treat the shares as a stock in trade irrespective of the period of holding listed the shares, the income arising from the transfer of such shares could be treated as a business income. In the present case, though the assessee disputes the treatment given in the books of accounts but admittedly fact remains that the shares were shown as a part of stock in trade and therefore the Circular No.6/2016 dated 29.02.2016 issued by the CBDT cannot come to the rescue of the assessee. However, it is settled position of the law that the intention at the time of acquisition of shares is the determinative factor to decide whether the shares are held on stock in trade or investment account. In the present case, there is a prima facie evidence on record to show that the shares are held as stock in trade on purchase of shares was

debited to P&L A/c. This would prima facie prove the intention on the part of the assessee that the shares are held on trading account. Nothing is brought on record in rebuttal of this evidence. Therefore, we have no option but to hold that the investments in shares were held in trading account and the surplus arising on sale of such shares is liable to tax as business income.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 16<sup>th</sup> September, 2019 in Chennai.

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 16<sup>th</sup> September, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF