



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT, AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.7272/Mum./2011
(Assessment Year : 2008-09)

Maximum Securities Ltd.
1st Floor, Sterling Centre
Andheri Kurla Road
Opp. Divine Child High School
Andheri (E), Mumbai 400 093
PAN – AAACM7252M

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-2(2), Mumbai

..... Respondent

Assessee by : Shri V. Vinod Kumar
Revenue by : Shri P.V. Thombare

Date of Hearing – 13.11.2019

Date of Order – 28.11.2019

ORDER

PER SAKTIJIT DEY, J.M.

The captioned appeal has been filed by the assessee challenging the order dated 2nd September 2011, passed by the learned Commissioner of Income Tax (Appeals)-5, Mumbai, pertaining to the assessment year 2008-09.

2. Though, the assessee has raised six grounds, however, on the instructions of the assessee, the learned Authorised Representative submitted that grounds no.4 to 6, are not to be pressed. Accordingly, these grounds are dismissed as not pressed.

3. The short issue arising for consideration in rest of the grounds is, whether or not the cost of acquisition of shares for indexation benefit has to be reckoned from financial year 2005-06 as held by the Revenue authorities or from the financial year 1995-96 as claimed by the assessee.

4. Brief facts are, the assessee company is engaged in the business of trading in shares and depository participant and marketing of financial products. For such activity, the assessee had acquired Bombay Stock Exchange (BSE) Membership Card in the year 1995-96. Under the scheme of demutualization of Stock Exchange in the financial year 2005-06, all the members were offered 10,000 fully paid equity shares of BSE of ₹ 1 each for cash at par in exchange of the membership card. The assessee being a member of BSE was also allotted 10,000 shares. These shares allotted to the assessee were sold/transferred in the impugned assessment year for a total consideration of ₹ 4,74,39,600. While computing the capital gain, the

assessee claimed indexation benefit on the cost of acquisition of the BSE membership card in the year 1995–96. The Assessing Officer did not accept the aforesaid claim of the assessee. He was of the view that what the assessee held in the year 1995–96 is the BSE membership card and not the shares of BSE. Thus, he held that the indexation benefit would be allowed on the cost of acquisition of asset in the financial year 2005–06, wherein, the shares were allotted. Though, the assessee challenged the aforesaid decision of the Assessing Officer before learned Commissioner (Appeals), however, he did not find merit in the submissions of the assessee.

5. The learned Authorised Representative submitted, assessee should be allowed indexation benefit on the cost of acquisition of the BSE Membership card in the year 1995–96. In support of such contention, he relied upon the Third Member decision of the Tribunal, Mumbai Bench, in *Techno Shares and Stocks Ltd. v/s ACIT, 5938/Mum./2012*, dated 30th August 2019.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. The short issue in dispute before us is, what is the date of acquisition of BSE shares for the purpose of computing the indexed cost of acquisition under section 48 of the Act. Undisputedly, the assessee acquired the BSE Membership card in the financial year 1995-96 and after demutualization; the assessee got 10,000 shares of BSE in financial year 2005-06 in lieu of the membership card. The Revenue authorities have held that the assessee would be allowed indexation benefit from the financial year 2005-06, since, the BSE shares were given to the assessee in that financial year. According to the Revenue, what the assessee held in financial year 1995-96 is the membership card and not the shares. However, while deciding identical issue, Third Member Bench of the Tribunal in case of Techno Shares and Stocks Ltd. (supra) has held that the cost of acquisition of shares of BSE shall be the original cost of acquisition of membership cards in terms of section 55(2)(ab) of the Act. Further, the Bench has held that as per clause (ha) of Explanation-1 to section 2(42A) of the Act, period of holding of shares of BSE would be reckoned from the period for which the person was a member of recognized Stock Exchange in India immediately prior to such demutualization or corporatization and such period should also be included in the period of holding of shares. Thus, the Bench ultimately held that the period of

holding of all shares of BSE Ltd. shall be reckoned from the date of original membership of BSE and not from the date of allotment of shares in BSE. The ratio laid down in the aforesaid decision clinches the issue in favour of the assessee. Therefore, the period of holding of shares in the present case also has to be reckoned from the date of original membership of BSE i.e., financial year 1995–96 and not from the date of allotment of shares in BSE as held by the revenue authorities. Accordingly, we direct the Assessing Officer to compute long term capital gain on transfer of shares after providing indexation benefit by considering the date of acquisition of shares in financial year 1995–96. Grounds are decided accordingly.

8. In the result, appeal stands partly allowed.

Order pronounced in the open Court on 28.11.2019

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28.11.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai