

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A K GARODIA, ACCOUNTANT MEMBER

ITA No.1413/Bang/2017
Assessment year: 2011-12

Smt. Sudha Narayanamurthy, # 575, Amoghvarsh, 21 st Main, 35 th Cross, 4 th ‘T’ Block, Jayanagar, Bangalore – 560 041. PAN: ADQPM 7361R	Vs.	The Deputy Commissioner of Income Tax, Circle 7(2)(1[formerly 4(1)], Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri H.N. Khincha, CA
Respondent by	:	Shri Sunil Kumar Agarwal, Addl.CIT(DR)(ITAT) Bengaluru.

Date of hearing	:	18.12.2019
Date of Pronouncement	:	.01.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the Assessee is against the order dated 28.04.2017
of the CITA relating to assessment year 2011-12.

2. The only issue that arises for consideration in this appeal is as to whether the revenue authorities were justified in allocating Portfolio Management Services (PMS) Charges while computing income under the head short term capital gain (STCG) which suffers tax @ 15% at Rs.37,71,050 as against the claim of assessee that the deduction on account of PMS Charges while computing income under the head STCG should be only Rs.6,63,040.

3. The assessee is an individual. For the AY 2011-12, the assessee filed return of income on 27.7.2011 declaring an income of Rs.24,60,50,090 comprising of following:-

Income from house property	84,000
Income from Short Term Capital Gain	10,09,23,408
Income from Other Sources	14,50,42,677

	24,60,50,085

4. The Assessee had paid Portfolio Management Services (PMS Charges) to Portfolio Managers for rendering services in relation to investments advise which resulted in the Assessee earning income in the form of interest which is chargeable to tax under the head "Income from other sources" and also Dividend which is exempt besides income in the form of Short term Capital Gain (STCG). The income earned from STCG is chargeable to tax at 15% whereas income in the form of interest is chargeable to tax at 30%. The Assessee paid PMS Charges of Rs.72,94,053/-. The PMS Charges had been paid by the Assessee to two Portfolio Managers viz., HDFC Real Estate PMS and Morgan Stanley PMS. The payment made to HDFC Real Estate PMS was a sum of Rs.50,20,034 and to Morgan Stanley PMS was a sum of Rs. 22,74,018 respectively. In

the computation of total income the Assessee had claimed deduction of PMS Charges against income in the form of STCG which is chargeable to tax under the head "Capital Gains" and which suffers tax at 15% of Rs.8,14,961/- (Rs.42,550/- towards PMS Charges paid to HDFC Real Estate PMS and Rs.7,72,411/- towards Morgan Stanley PMS). A sum of Rs.33,52,541/- was claimed as deduction towards PMS Charges against income in the form of interest which was chargeable to tax under the head "Income from other sources" which is chargeable to tax at 30%. There is no dispute that out of the total PMS charges paid by the Assessee of Rs.72,94,053, a sum of Rs.31,26,551/- (Rs.72,94,053 – Rs.8,14,961 + Rs.33,52,541) is with reference to Dividend Income earned by the Assessee which is tax exempt and was not claimed as deduction by the Assessee in the computation of total income.

5. According to the AO the aforesaid bifurcation of PMS charges at Rs.8,14,961/- towards income in the form of STCG and Rs.33,52,541/- towards Interest income was not properly explained by the AO. He therefore allocated PMS Charges of Rs.41,67,502/- on the basis of income under the head "Capital Gain" (Rs.10,17,38,369) and interest income (Rs.1,06,86,059) which was chargeable to tax under the head "Income from other sources" which resulted in the PMS charges being apportioned at Rs.6,63,040/- against STCG and Rs.37,71,050/- against income under the head interest income which was chargeable to tax under the head "Income from other sources". The following were the relevant observations of the AO in making the aforesaid apportionment of PMS Charges:-

"On going through the computation of income, it is noticed that the assessee has claimed PMS on Interest referable to STCG and PMS on interest income separately. The total PMS interest paid was Rs.41,67,502/- against a total income of Rs.11,24,24,128/-. The assessee

has claimed PMS management fee against STCG at Rs.663040/- which suffer tax at 15%. Whereas the assessee has claimed PMS management fee paid of Rs.33,52,541/- against interest income of Rs.10686059/-, this income suffers tax at thirty percent.

6. During the Course of hearing the assessee's AR was unable to bifurcate exact interest referable to STCG and interest referable to interest received. In view of the above it is held that, it is necessary to allow Proportionate interest on both income from capital gains and on interest income. Accordingly, the proportionate interest has been allowed as under:

STCG (STT suffered)	Rs.10,10,75,329/-
STCG (Non STT suffered)	<u>Rs. 6,63,040/-</u>
	Rs.10,17,38,069/-
Less: Interest apportioned	<u>Rs. 37,71,050/-</u>
	Rs. 9,79,67,019/-
Interest received	Rs. 1,06,86,059/-
Less: PMS interest apportioned	<u>Rs. 3,96,452/-</u>
	Rs. 1,02,89,607/-

7. The above bifurcation of PMS Charges did not result in any change in the total income, but consequent to apportionment of PMS charges as above, the income under the head "Income from other sources" stood enhanced and the income under the head "Capital Gain" stood reduced. Consequently the tax payable on the income returned became more because STCG was chargeable to tax at a lower rate whereas income under the head "Income from other sources" was chargeable to tax at a higher rate. The Assessee was therefore aggrieved by the aforesaid method of apportionment of PMS Charges and he filed appeal before CIT(A).

8. Aggrieved by the action of the AO, the assessee filed appeal before the CIT(Appeals). The assessee submitted the basis of allocation of PMS charges as done by the Assessee in the computation of income by submitting that the Assessee had used the services of two portfolio managers viz., (1) HDFC Real Estate Portfolio and (2) Morgan Stanley PMS.

9. As far as HDFC Real Estate Portfolio PMS is concerned, the Assessee submitted that the Assessee had one PMS account was with HDFC named HDFC Real Estate Portfolio - 1, with Account No. 204986. The Assessee filed a copy of covering letter dated 18.12.2010 of the PMS provider to show the way, the performance fees was being charged by the aforesaid PMS provider. The audited financials of this PMS was also filed consisting of profit and loss account, balance sheet, capital register and bank book for the year ending 31-3-2011 . The audited profit and loss account showed a gross income of Rs. 1,60,01,119/- which is the figure shown in the 3rd column of the chart under the head HDFC Real Estate PMS Provider. The Capital Register showed the 4 quarterly management expenditure debited as under:-

Management fees QE June 2010	13,47,472-84
Management fees QE September 2010	12,12,296-39
Management fees QE December 2010	12,74,285-00
Management fees QE March 2011	11,85,980-00

	50,20,034-23

10. The aforesaid PMS fees was divided proportionately based on the income earned viz., Rs. 1,35,627 in the form of Taxable STCG, Rs.51,79,426 in the form of dividend which is exempt and Rs.1,06,86,059 which is interest earned on debentures which is chargeable to tax under the head income from other sources. Thus the PMS fees was apportioned at Rs.42,550/- towards earning of STCG (taxable) Rs.16,24,943/- towards earning of exempt dividend income and Rs.33,52,541/- towards earning of debenture interest income chargeable to tax under the head income from other sources.

11. As far as apportionment of PMS fees paid to Morgan Stanley PMS is concerned, the Assessee explained that there were 3 PMS Schemes namely Empower, Platinum and Capital. In respect of platinum and capital the appellant has not claimed any expenditure as the entire income from these two schemes was exempt income being dividend. A statement of Morgan Stanley in respect of Morgan Stanley Empower was filed which showed capital loss of Rs.41,19,590/- and other income Rs.3,21,607/- (dividend Rs.1,46,166/- plus bank interest Rs.1,75,441/-). The statement shows management expenses of Rs.9,45,953/-. However, as books the assessee had shown only Rs.9,18,577/- as expenditure which is dividend proportionate to income earned.

12. The following chart was filed before CIT(A) to explain the basis of apportionment of PMS Charges as done by the Assessee in the computation of total income:-

Nature of Income	Own Account	HDFC PMS	HDFC REP (real estate PMS)	Morgan Stanley Empower	Morgan Stanley Platinum	Morgan Stanley capital
Income from capital gains						
Short-term capital gains – STT suffered	(-) 88,93,205	11,40,88,161	-	-41,19,567	-	-
Short-term capital gains – Non-STT	4,34,110	93,303	1,35,625	-	-	-
Long-term capital gains – STT suffered	9,04,39,346	2,73,28,590	-	-	-	-
Long-term capital gains – Non-STT	(-) 20,23,042	18,48,087	-	-	-	-
Income from Other sources						
Dividend	56,28,23,134	1,18,14,892	51,79,426	1,46,166	17,94,078	4,06,100
Bank interest	-	-	-	1,75,441	5,26,325	1,75,441
Debenture interest income	-	-	1,06,86,059	-	-	-
Total income	64,27,80,282	15,51,73,034	1,60,01,112	-37,97,960	23,20,403	5,81,541
PMS Fee paid	-	-	50,20,034	9,18,577	4,16,950	9,38,491
Allocation made by the Appellant						
STCG	-	-	42500	7,72,411	-	-
Interest	-	-	33,52,541	-	-	-

13. The CIT(A) however confirmed the action of the AO for the following reason:

“5.1 The Appellant has not brought any documentary evidence to substantiate the basis of allocation of PMS fee to selective PMS, providers. The allocation of expenses should have been done on the total income earned through PMS under the head STCG and interest income. The very term "allocation" implies that there is no overly precise method available for charging a cost to a object, so the allocating entity is using an approximate method for doing so. Thus, allocation of expenses has to be done either to spread the cost in the fairest way possible, or to do so in a way that impacts all the income on uniform basis. The basis for allocating expenses should be reasonable, there should be a clear relationship between the income, the activities it relates to, and the basis of allocation. In the instant case, the PMS providers have not allocated any expenses to any specific income/loss and the Appellant has adopted a method which is not maintainable.

5.2. In view of the above discussion, I find no infirmity in the order of AO in allocating the expenses in proportion of total income under different heads and charging of tax as per the separate rate of taxes applicable.”

14. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

15. The Id. counsel for the assessee filed the chart which is given as **Annexure-I to this order** and submitted that assessee has paid PMS charges to two different entities viz., HDFC Real Estate Portfolio Fund and Morgan Stanley PMS . The income earned from each of the PMS service providers have been identified and the PMS charges have been apportioned on the basis of income earned from dividend, interest on debentures and short term capital gain. The Id. counsel for the assessee

submitted that the revenue authorities have made the allocation of PMS charges without recognising the income earned from service provided by the portfolio managers. According to him, the apportionment made by the Assessee is correct and is based on the income earned in the form of dividend, interest income on debentures and STCG and this basis of apportionment is correct.

16. The Id. DR besides relying on the order of the CIT(A) further submitted that the allocation should be based on the services provided by the PMS provider and not on the basis of income. This argument of the Id. DR, however, is not sustainable because that was not the basis of apportionment either by the AO or the CIT(Appeals) and the revenue authorities have proceeded to apportion the PMS charges only on the basis of income earned. The Id. DR therefore cannot set up a new case before the Tribunal on the basis of allocation of PMS charges.

17. As far as the merits of the claim made by the assessee is concerned, We find from the Chart given as annexure to this order that the PMS Charges are apportioned on the basis of the income earned on the basis of services provided by the PMS provider. The basis of apportioning PMS Charges on the basis of income earned on the basis of service provided by the PMS provider has been accepted by the AO as well as the CIT(A). The reason why there is difference in apportionment between the Assessee and the revenue is because of inclusion of STCG earned by the Assessee on his own without the services of the PMS provider has also been included by the revenue in the income generated through the services of PMS providers. The Chart annexed to this order as Annexure-II will show that the STCG earned by the Assessee of Rs.10,17,38,369 comprises of STCG earned by the Assessee on her own without the services of PMS provider as well as through services provided by the PMS provider. The STCG

earned by the Assessee through the services of the Two PMS providers is reflected in the Chart given as **Annexure-II to this order**. Therefore, the apportionment of PMS charges paid by the Assessee of Rs.41,67,502/- has to be apportioned only on the basis of income earned through the respective PMS providers to the total PMS charges. This basis of apportionment as given in the chart given as Annexure-I to this order, in our view appears to be correct. This Chart was however not filed before the revenue authorities but Chart given as Annexure-II to this order was filed before the CIT(A) and there is no difference in the chart given as Annexure-I and II in principle except the manner of presentation. In our view, the CIT(A) was not justified in holding that the Assessee has not brought any documentary evidence to substantiate the basis of allocation of PMS fee to selective PMS providers. The documents in the form of statement of the PMS providers viz., HDFC Asset Management Company Ltd. (at Pages 46 to 56) and that of Morgan Stanley AMC (Empower fund) (at page-57 of paper book) clearly show the income earned from the two PMS providers. The CIT(A) accepts that allocation of expenses should have been done on the total income through earned through PMS under the head STCG and interest income. He has however overlooked that this is the basis of allocation by the Assessee. On the facts and circumstances of the present case, we are satisfied that the basis of allocation of PMS charges as done by the Assessee is correct and deserves to be accepted. We therefore direct that the allocation of PMS charges as done by the Assessee be accepted.

18. Consequently, the appeal by the Assessee is allowed.

19. In the result, the appeal by the Assessee is allowed.

Pronounced in the open court on this 3rd day of January, 2020.

Sd/-

Sd/-

(A K GARODIA)
ACCOUNTANT MEMBER

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 3rd January, 2020.

Encl: Annexure I & II

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(E)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.

ANNEXURE-II to the order**Details of Incomes earned from PMS Account and AMC fees paid**

	Total	Own Account	HDFC PMS PMS	HDFC REP REAL ESTATE PMS	Morgan Stanley		Capital
					Empower	Platinum	
a)							
Income from Capital Gains							
Short Term Capital Gains - STT Suffered	88,93,265	11,40,88,161			41,19,567		
Short Term Capital Gains - Non STT	4,34,110	93,303		1,35,627			
Long Term Capital Gains - STT Suffered	9,04,39,346	2,73,28,590					
Long Term Capital Gains - Non STT	-20,23,042	18,48,087					
b)							
Income from Other Sources							
Dividends	56,28,23,134	1,18,14,892		51,79,426	1,46,166	17,94,078	4,06,100
Bank Interest				1,06,86,059	1,75,441	5,26,325	1,75,441
Debiture Interest Income							
Total Income	64,27,80,282	15,51,73,034	1,60,01,112		-37,97,960	23,20,403	5,81,541
PMS Asset Management Charges (AMC)				50,20,034	9,18,577	4,16,950	9,38,491
Allocation of PMS AMC Fee to							
Income from Capital Gains							
Short Term Capital Gains - STT Suffered					7,72,411		
Short Term Capital Gains - Non STT				42,550			
Long Term Capital Gains - STT Suffered							
Long Term Capital Gains - Non STT							
Income from Other Sources							
Dividends							
Bank Interest				16,24,943	1,46,166	4,16,950	9,38,491
Debiture Interest Income				33,52,541			
PMS Asset Management Charges (AMC)				50,20,034	9,18,577	4,16,950	9,38,491

Note: No Allocation is done for AMC Fees for Bank interest in the PMS since the income is from idle funds in the bank accounts

Total PMS Charges	72,94,05,200
Less: Relating to Dividends	31,26,550,000
Claimed in Income tax Return	41,67,502,000