

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
SH. N. K. CHOUDHARY, JUDICIAL MEMBER**

ITA No.1132/Del/2017
Assessment Year: 2011-12

Ratna Commercial Enterprises Pvt Ltd. 4 th Floor, Punjabi Bhawan, 10, Rouse, Avenue, New Delhi-110002	Vs.	ADIT Range-21 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Chandan Agarwal, CA
Respondent by	Sh. Gayasuddin Ansari, Sr. DR.

Date of hearing:	28/01/2020
Date of Pronouncement:	31/01/2020

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 21.12.2016 of the CIT(A)-7, New Delhi relating to A.Y.2011-12.

2. Although a number of grounds have been raised by the assessee, these all relate to the order of the CIT(A) in confirming the action of the AO in treating the short term capital gain of

Rs.93,08,807/- as business income and further upholding the disallowance of expenditure of Rs.2,62,097/- on account of fees paid for increase in capital.

3. Facts of the case, in brief, are that the assessee is a company and engaged in the business of financial services as NBFC and investing in shares and mutual funds. It filed its return of income on 29.09.2011 declaring total income of Rs.16,45,48,570/- under normal provision and book profit of Rs.14,56,29,065/- u/s. 115 JB. The assessee revised its return of income on 27.09.2012 declaring total income of Rs.14,08,02,104/-. The AO during the course of assessment proceedings noted that while computing the income the assessee has not disallowed the expenses incurred on increase in authorized capital including filing fee paid to the ROC. Applying the provisions of section 35D and relying on various decisions the AO disallowed the amount of Rs.2,67,847/- claimed by the assessee as revenue expenditure on account of filing fees paid to ROC for increase in the share capital.

4. The AO further noted that the assessee has treated the profit from share transactions amounting to Rs. 93,08,807/- as short term capital gain. From the various details furnished by the assessee he noted that the assessee is categorizing some shares as investment while some other scrips have been treated as stock in trade in the books of account. He noted that the assessee is maintaining common accounting system for both the

trading and investment portfolios and is showing income from trading in shares as well as capital gains on transfer of shares. He noted that none of the shares which are part of the table of computation of short term capital gain were in the opening stock of shares. Also, none were in the closing balance of investments. These were, therefore, intra year stock transactions which were carried out in the regular course of business by the assessee with the motive to harvest the capital appreciation resulting from increase in the stock prices. Rejecting the explanation given by the assessee, the AO treated the profit on sale of shares as business income as against short term capital gain treated by the assessee.

5. In appeal the Ld. CIT(A) sustained both the additions made by the AO.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. So far as the disallowance of Rs.2,62,097/- on account of fees paid for increase in share capital is concerned, the Ld. Counsel for the assessee did not make any argument. Therefore, the ground raised by the assessee on this issue is dismissed.

8. So far as the treatment of short term capital gain of Rs.93,08,807/- as business income is concerned the Ld. Counsel for the assessee strongly challenged the order of the CIT(A). He submitted that both the lower authorities have erroneously recorded the facts and thereby made the disallowance. He

submitted that out of 72 transactions on account of sale of shares 41 transactions have opening balances and whatever shares have been purchased during the year have not been sold by the assessee. The average period of holding of shares is 156 days and assessee is maintaining separate set of books of accounts for investments made and stock-in-trade. The assessee has made investment and traded only in mutual funds and not in shares. The assessee has paid security transaction tax on all purchases. Further the revenue authorities in the preceding years as well as in succeeding years have accepted capital gain u/s.45 of the IT Act. He submitted that in the preceding years the AO has accepted the short term capital gain and in the subsequent years also the short term capital gain has been accepted, therefore, for the impugned assessment year treating the short term capital gain as business income is not justified. The Ld. Counsel for the assessee also filed the following table to substantiate the above proposition:

Ratna Commercial Enterprises P Ltd
AY 2011-12

Sl.No	AY	Particulars	Remarks
1	2012-13	AO accepts LTCG	Copies of retrun, computation and assessment,order attached
2	2011-12	Ci rA and A - J accepts LTCG	Copies of retrun, computation ana assessment order attached
3	2010-11	AO accepts Capital gains u/s 45	Copies of retrun, computation and assessment order attached
4	2009-10	AO accepts Capital gains u/s 45	Copies of retrun, computation and assessment order attached

5	2008-9	CITA accepts Capital gains u/s 45	CIT(A) order attached
6	2007-8	CITA- XVIII accepts Capital gains u/s 45	CIT(A) order attached
7	2006-7	CITA-XVIII, accepts Capital gains u/s 45	CIT(A) order attached

Case Law

1	2008-9/ 2010 11	Gyan Enterprises P Ltd - ITA No 4149/2013 and ITA No 6116/2014
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9. The Ld. Counsel for the assessee also relied on the decision of the coordinate Bench of the Tribunal in the case of M/s. Gyan Enterprises (P) Ltd. Vs. DCIT and in ITA No.6116/Del/2014 order dated 19.10.2015 in A.Y.2008-09 and 2010-11 respectively.

10. The Ld. Counsel for the assessee further submitted that the total investments made by the assessee is Rs.123 crores and holds inventory of about Rs.11 crores and has not even done sale/ purchase of 5% of the total investment during the year.

11. The Ld. DR on the other hand heavily relied on the order of the AO and the CIT(A). He submitted that the Ld. CIT(A) has given valid reasons while upholding the action of the AO in treating short term capital gain as business income. He has relied on the decision of the Hon'ble Supreme Court in the case of Raja Bahadur Visheshwara Singh Vs. CIT reported in 41 ITR 685 which is squarely applicable to the facts of the present case. Further the assessee has been regularly trading in shares and, therefore, there is no justification for treating the transactions as disposal of investment and the AO has correctly taxed the same

as regular business income of the assessee. He accordingly submitted that the order of the CIT(A) be upheld and the ground raised by the assessee on this issue be dismissed.

12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case treated the short term capital gain of Rs.93,08,807/- as business income. We find the Ld. CIT(A) relying on the decision of Hon'ble Supreme Court in the case of Raja Bahadur (supra) upheld the action of the AO. While doing so he further noted that merely because the volume of transactions in share trading is limited the same does not change the character of the transaction from trading to investment. According to him, there is no material to show that shares and security purchased in the year under consideration and classified as investment in books were actually intended to be long term investment. According to him besides sale of shares shown as investment on the first day of the accounting year, the assessee has also traded in quoted shares during the year part of which has been disclosed as business income. The assessee is regularly trading in shares over the years and, therefore, there is no justification for treating the transaction as disposal of investments. It is the submission of the Ld. Counsel for the assessee that out of 72 transactions 41 transactions relate to transactions out of opening stock and whatever shares have been purchased during the year have not been sold. It is the submission of the Ld. Counsel for the assessee

that it trades only in mutual funds and not in shares. Further the assessee has also paid security transaction tax on all the shares that have been purchased. Since the above submissions of the Ld. Counsel for the assessee is contrary to the findings given by the lower authorities, therefore, considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue afresh in the light of the submissions made by the assessee. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. While doing so he is also directed to examine the treatment given by him in the preceding and subsequent year on similar transactions carried on by the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

13. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31.01.2020.

Sd/-
(N. K. CHOUDHARY)
JUDICIAL MEMBER

Neha

Date:- 31.01.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	28.01.2020
Date on which the typed draft is placed before the dictating Member	29.01.2020
Date on which the approved draft comes to the Sr.PS/PS	31.01.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	31.01.2020
Date on which the fair order comes back to the Sr. PS/ PS	31.01.2020
Date on which the final order is uploaded on the website of ITAT	31.01.2020
Date on which the file goes to the Bench Clerk	31.01.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	