

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी,
न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

ITA Nos.367 & 368 /Mds/2015
Assessment Years: 2008-09 & 2009-10

The Assistant Commissioner of Income –tax,
Corporate Circle I(3),
Chennai – 600 034. v. M/s.C.S.Holdings Pvt.Ltd.,
New No.6, Old No.21, I Floor,
Postal Colony, 4th Street,
West Mambalam,
Chennai – 600 035.

PAN : AACCC 8370 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.369/Mds/2015

& CO No.112/Mds/2015

निर्धारण वर्ष /Assessment Year : 2011-12

The Assistant Commissioner of Income –tax,
Corporate Circle I(3),
Chennai – 600 034. v. M/s.C.S.Holdings Pvt.Ltd.,
New No.6, Old No.21, I Floor,
Postal Colony, 4th Street,
West Mambalam,
Chennai – 600 035.

PAN : AACCC 8370 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/ Cross Objector)

Assessee by : Shri R.Sivaraman, Advocate

Department by : Shri.R.Durai Pandian, Sr.AR

सुनवाईकीतारीख/Date of Hearing : 31.10.2016
घोषणाकीतारीख/Date of Pronouncement : 04.11.2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These appeals by the revenue and cross objection by the assessee is directed against the order of CIT(A) challenging / supporting the deletion of additions made under Section 14A of the Act.

2. The cross objection filed by the assessee, wherein the assessee stating that the CIT(A) erred in not explicitly stating in the concluding part of the order that the income arising on sale of shares is Long Term Capital Gain, after discussion and finding regarding the same in the body of the order.

2.1 There was a delay of 190 days in filing the appeal for which the assessee filed a condonation petition stating that the delay was due to bonafide reason. The assessee was forced to file this CO on the receipt of the order under Section 154 dated 26.09.2015 from AO where the AO misunderstood the order of the CIT(A) while passing the consequential order went for rectification proceedings under Section 154 (assessee had a bonafide belief that the assessing officer correct the mistake in rectification

proceedings). Still he continued to carry on the mistake. Hence, the assessee filed that this CO on 05.10.2015 by delay of 190 days.

3. We have carefully gone through the condonation petition and in our opinion, there is a reasonable cause in filing cross objection belatedly. Accordingly, the cross objection is admitted for adjudication.

4. Coming to the merit of revenue appeals is with regard to deletion of addition made under Section 14A of the Act.

5. We heard both the parties and perused the material available on record. The same issue came before the Tribunal in assessee's own case for the assessment year 2010-11 in ITA No.1699/Mds/2013 vide order dated 20.11.2013 and the Tribunal held as follows:

"5. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below, as well as the decisions relied on by the representatives of both the sides. It is an un-disputed fact that the assessee-company was incorporated in the year 2007 with the object of making investment in shares. It is also not in dispute that when the investment was initially made in the AY.2007-08, the shares were held by the assessee as investment. In the period relevant to the AY.2008-09, the entire shareholding of the assessee was converted

from investment to stock in trade on 01-04-2008. In the AY.2009-10, the assessee continued to hold the shares as stock in trade. Again in AY.2010-11, vide Board's resolution dated 01-04-2009 the assessee converted the shares held as stock in trade into investment. It is evident from records that the assessee has made investment in shares from borrowed capital and has been claiming interest paid thereon as expenditure during the period, the shares were held as stock in trade.

6. The provisions of section 45(2) provides that the profit or gain arising from the transfer by way of conversion of a capital asset to stock in trade on a business carried on by him shall be chargeable to income tax as his income of the previous year in which such stock in trade is sold or otherwise transferred by him. For the purpose of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of capital asset. However, the provisions of section 45 does not provide for the treatment of assets if converted from stock in trade to investment.

Section 2(47) defines transfer in relation to the capital asset. Sub-clause (iv) states that in case where the asset is converted by the owner thereof into, or is treated by him as stock in trade of a business carried on by him, such conversion or treatment shall be treated as transfer in relation to the capital asset. Section 2(47) also does not provide for the vice-versa situation where the stock in trade is converted into capital asset.

7. Undoubtedly, it is the prerogative of the assessee to manage the

affairs of his business. However, the assessee has to follow consistent method in accounting policies and treatment of his assets. The Hon'ble Madras High Court in the case of CIT Vs. N.S.S. Investments P. Ltd., (supra), has held that the profit on sale of shares held as investment is to be treated as capital gains instead of 'Business Income' and that the assessee can hold some shares as capital for the purpose of earning dividend and some shares as stock in trade for the purpose of doing business of buying and selling.

In case of Felspar Credit and Investment P. Ltd. Vs. CIT (supra), the Hon'ble High Court has held that where the shares have been held as investment, the profit on sale of shares results in capital gains. There is no dispute about the law laid down by the Hon'ble Jurisdictional High Court in the aforesaid decisions. However, the aforesaid decisions do not apply in the facts and circumstances of the present case. In the instant case, the assessee has converted the shares initially held as investment into stock in trade and after two AYs, again converted the stock in trade into investment. The period during which the shares were held as stock in trade, the assessee claimed the interest on borrowings as expenditure. The assessee again in the year of sale of shares converted the shares held as stock in trade into investment and claimed the benefit of section 10.

8. It is not in dispute that when shares were sold by the assessee, they were converted into capital asset. Thus, the gain arising there from on sale would be assessable as capital gain. Now, what is to be ascertained is whether the shares at the time of sale were 'Short Term Capital Asset' or a 'Long Term Capital Asset' for which

period of holding the shares has to be determined. The Delhi Bench of the Tribunal in the case of Splendor Constructions P. Ltd., Vs. ITO (supra) while dealing with a similar issue has held that where the property-in-question is held by the assessee as stock in trade for the purpose of its business and the same had been converted by the assessee into investment, the period for which the said property was held as stock in trade cannot be reckoned for ascertaining as to whether it was a 'Long Term Capital Asset' or a 'Short Term Capital Asset' within the meaning given in Section 2(29A) and 2(42A) of the Act. The Tribunal concluded that in case where the property held as stock in trade is converted into investment, for ascertaining as to whether property is a Short Term Capital Asset or a Long Term Capital Asset, period for which said asset is held by the assessee's as capital asset (investment) alone has to be reckoned.

Applying the same principle in the present case, the period for which the shares were held as stock in trade by the assessee is to be excluded from the total period for which the shares were held by the assessee. Since, the date of acquisition of shares is not forthcoming from the records, we remit this issue back to the file of the Assessing Officer to determine the total period of holding of shares as capital asset. The period during which the shares were held as stock in trade is to be excluded.

The appeal of the assessee is thus allowed for statistical purposes.

6. In view of the above order of Tribunal, the contention of the assessee's is that the exempt income was incidental to its investment in

shares which would not attract section 14A disallowance. In our opinion, it is now a settled issue that once investment or returns therefrom has been treated as capital gains, the basis foundation of the disallowance based on treatment of shares as stock-in-trade is not liable to be sustained. The coordinate bench has directed the assessing officer to compute capital gains as per law and details placed on record. We are inclined to remit the issue in dispute to the file of the assessing officer on similar direction for all these assessment years.

7. In the result, all the three appeals of the revenue in ITA Nos.367, 368 & 369/Mds/2015 are all allowed for statistical purposes and cross objection filed by the assessee in CO No.112/Mds/2015 is dismissed as infructuous.

Order pronounced on 04th November, 2016 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 04th November, 2016.

sp.

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.