

आयकर अपीलीय अधिकरण, 'बी' न्यक्षपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री वी दुर्गा राव, न्यक्षिक सदस्य एवं श्री जी मंजूनथा, लेखक सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2166/Chny/2017  
निर्धारण वर्ष /Assessment Year: 2010-11

**M/s. Sak Industries Pvt. Ltd.,**  
27-F, Ranjith Road, Kotturpuram,  
Chennai – 600 085.  
**[PAN: AAGCS 3326Q]**

**The Dy. Commissioner of**  
**Income Tax,**  
**Vs. Corporate Circle-VI(1),**  
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Mr. Sanjeev Aditya M, CA  
प्रत्यर्थी की ओर से /Respondent by : Mr. G. Johnson, Addl. CIT  
सुनवाई की तारीख/Date of Hearing : 06.09.2021  
घोषणा की तारीख /Date of Pronouncement : 24.09.2021

आदेश / **ORDER**

**Per V. Durga Rao, Judicial Member:**

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-15, Chennai in I.T.A No.749/A.Y 2010-11/CIT(A)-15/2013-14 dated 19.06.2017 relevant to the Assessment Year 2010-11.

2. The appeal filed by the assessee is delayed by 01 day, for which, the assessee has filed affidavit for condonation of the delay, to which, the Id. DR has not raised any serious objection. Consequently, since

the assessee was prevented by sufficient cause, the delay in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. The brief facts of the case are that the assessee is a private limited company and filed return of income declaring total income of Rs. 2,95,09,720/- under the normal provisions and Rs. 6,22,75,168/- u/s. 115JB of the Income Tax Act, 1961 (hereinafter as "the Act") on 25.09.2010. The return of income filed by the assessee was processed u/s. 143(1) of the Act after following the procedure assessment was completed u/s. 143(3) of the Act on 28.02.2013. In the assessment order, the A.O has noted that the assessee has purchased 1,25,000/- equity shares for of ING Vysya Bank during the month of January, February, 2009 on various dates and sold the same during the during the month of September, 2009. The A.O was asked the assessee why the above transactions cannot be considered as a business income. The assessee has submitted before the A.O that the above shares declared as investment in the balance sheet and the assessee is also sell and purchase of the shares in the last so many years. In the earlier years also, the sale and purchase of the shares by the assessee treated as business income which has been disputed by the assessee in appeal for A.Y 2007-08 & 2008-09. The holding of the shares by the

assessee is only approximately seven months, if the same would have been an investment, the assessee could not have been sold the same within such a short span of time. This is the trite law that the treatment by the assessee in its books of account is not decisive but the substance of the transaction is the assessee has transacted in these shares in the month of January, February, 2009 and sold them in the month of September, 2009, so that it has enough time to decide whether to avail the set-off of brought forward capital loss and give the colour to the entries as per its wish. The short holding of the shares and the conduct of the assessee in the past shows that the transactions are business in nature. Accordingly, the profit earned on sale of shares of Rs. 1,74,75,789/- is being treated as business income of the assessee and accordingly the assessee is not entitled to set it off with the brought forward capital loss from earlier years.

4. On appeal, the Ld. CIT(A) confirmed the order of the A.O by observing that the short holding of shares and the conduct of the assessee in disposing of the same within the short period of seven months that the intention of the assessee was not to make investment but to venture into trade. On being aggrieved, the assessee carried the matter before the Tribunal.

5. The Id. counsel for the assessee has submitted that the assessee purchased the shares for the year under consideration. Equity shares of ING Vysya Bank shows in the books of account as an investment and subsequently, the same were sold and submitted that the intention of the assessee is only in investment not in doing business in shares. He further submitted that the assessee only purchased shares from one company and sold it subsequently after seven months in a single transaction therefore, it may not be said that it is a business transaction.

6. On the other hand, the Ld. Departmental Representative strongly supported the orders passed by the authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. We find that the assessee has purchased 1,25,000/- equity shares of ING Vysya Bank during the month of January and February, 2009 and subsequently during the month of September, 2009 all the shares are sold. The assessee also shows the above transaction in its books of accounts as an investment. The A.O is of the opinion that the holding period is only seven months therefore, it has to be treated as a business income and the same view has been confirmed by the Ld. CIT(A). Further, we find that the assessee has purchased equity

shares of ING Vysya Bank, the same were sold subsequently it is only a single transaction simply because the assessee has sold shares within a period of seven months, it cannot be said that the intention of the assessee to carry the purchase and shares as a business activity. It has to be seen the total activities of the assessee i.e., whether the assessee is buying some shares selling again and purchasing the same, if the activity is continued activity buying and selling it may be inferred that the assessee's intention is to do business in shares. In this case, the single transaction has been done by the assessee. In our view, the activity carried by the assessee i.e., buying and purchase of shares of ING Vysya Bank is an investment not a business activity. Accordingly, we reverse the order passed by the CIT(A) and the appeal filed by the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

*Order pronounced on 24<sup>th</sup> September, 2021 in Chennai.*

**Sd/-**  
(श्री जी मंजूनाथा)  
**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 24<sup>th</sup> September, 2021.

EDN/-

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