

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

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

आयकर अपील सं./ITA No.2138/Chny/2017
निर्धारण वर्ष /Assessment Year: 2011-12

The Dy. Commissioner of Income Tax,
Corporate Circle-6(1),
Chennai.

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

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Mr. G. Johnson, Addl. CIT
प्रत्यर्थी की ओर से /Respondent by : Mr. Sanjeev Aditya M, CA
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 Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-15, Chennai in I.T.A No.750/2013-14/A.Y.2011-12/CIT(A)-15 dated 20.06.2017 relevant to the Assessment Year 2011-12.

2. The first ground of appeal is general in nature hence, no adjudication is required.

3. Grounds of appeal Nos.2 to 2.6 deals with whether the income arising out of shares is business income or income from capital gains?

4. In the assessment order, the A.O has asked the assessee why the sale of shares should not be treated as business income. The assessee has submitted that the date of purchase of shares on 18.12.2009 and sale of shares on 23.03.2011. The above transactions declared in the balance sheet as an investment and submitted that the same may be treated as capital gains. The A.O after considering the explanation of the assessee, he has observed that in the earlier years also the sale and purchase of the shares by the assessee has treated as business income which has been disputed by the assessee before the Ld. CI(A) and this year under consideration also it is treated as business income.

5. On appeal before Ld. CIT(A), the assessee has reiterated the submissions which he has made before the A.O. The Ld. CIT(A) after considering the explanation of the assessee he directed the A.O to delete the addition by treating the entire shares transaction made by the assessee is an investment.

6. On being aggrieved, the assessee carried the matter before the Tribunal.

7. The Ld. Counsel for the assessee has submitted that the year under consideration, he has made only one transaction the holding period of more than 12 months and therefore, the A.O is not justified in treating the transactions as a business transaction and the income arising out of the transaction is a business income and he strongly supported the order passed by the Ld. CIT(A).

8. On the other hand, the Ld. Departmental Representative strongly supported the orders passed by the A.O.

9. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. In this case the assessee has purchased shares of IndusInd Bank on 18.12.2009 and sold the same on 23.03.2011. The holding period of the shares is more than 12 months and only single activity carried by the assessee. In the balance sheet also it has shown as an investment. In view of the above facts, we are of the opinion that the activity carried by the assessee cannot be treated as a business activity. The Ld. CIT(A) by following the Circular Nos.4 & 6 deleted the addition made by the A.O, which reads as under:

“3.2 I have gone through the facts of the case and have also considered the rival submissions. In view of that, the case is discussed as under.

3.3 On perusal of the assessment order, it is noticed that the appellant has sold equity shares and has made a long term capital gain to the tune of Rs. 1,23,34,606/-. The appellant has treated the same as capital gains in computing the total income and has claimed the same as exempt under section 10(38) of the Income Tax Act, 1961. The appellant has entered into a single solitary transaction for purchasing and selling the equity shares with the intention of reinvesting the surplus funds. According to the AO, out of total gain on sale of shares of Rs. 1,23,34,606/-, the profit on sale of shares of IndusInd Bank to the tune of Rs. 1,09,79,4907- is to be treated as business income as the appellant has been dealing in purchase and sale of shares for the last so many years.

3.4. In the written submission, it has been contended by the appellant that there has been only one transaction of sale of shares and that too of a single investment indicates that the assessee is not a dealer in shares. Further, the appellant claims that such investments were treated as investments only in the Balance Sheet and not as stock-in-trade. Also, the appellant has also made a reference to the Circular No. 4/2007 which clearly makes a distinction between 'capital asset' and a 'trading asset' and states that where the appellant has entered into a single transaction of purchase and sale of shares, the same shall not tantamount to business activity and shall be investment activity and such income to be charged as capital gains only. Further, the appellant has placed" reliance on CBDT Circular no. 06/2016 dated 29.02.2016 which states that in respect of listed shares and securities held for a period of more than 12 months immediately preceeding the date of transfer, if the assessee decides to treat the income from transfer thereof as capital gain, the same shall not be put to dispute by the assessing officer. Hence, the appellant claims that the sale of shares of IndusInd Bank is squarely covered by the above mentioned circular and the appellant's action falls in line with the intent of the legislation.

3.5. I have considered the above submissions of the appellant. As laid down in the CBDT circular no. 4/2007, the substantial nature of transactions and the manner of maintaining books of accounts plays an important role in determining the nature of transaction. Also, as depicted by the Circular no. 06/2016, in the present case, the appellant has treated the shares as investment and not as stock-in-trade and there are no fine grounds to say that the appellant is a dealer in shares and not an investor especially when the sale of shares was a single solitary transaction. From the perusal of the facts and circumstances of the case, the contentions of the appellant are found in order. Therefore, keeping in view the above facts and circumstances of the case, the AO is directed to delete the addition of Rs. 1,09,79,490/-."

10. By considering the above order passed by the Ld. CIT(A), we find no infirmity in the order passed by the Ld. CIT(A). Thus, grounds of appeal No.2 to 2.6 raised by the Revenue are dismissed.

11. The next grounds of appeal No.2.7 to 3 relates to disallowance u/s. 14A of the Act. In the assessment order, the A.O has noted that the assessee-company had invested to the extent of Rs. 1,21,32,09,086/- and received a tax exempt dividend income of Rs. 1,01,89,949/-. The assessee has disallowed an amount of Rs. 33,09,000/- as expenses attributable to the earning of the exempt dividend income. The A.O did not accept the disallowance made by the assessee and he has invoked s. 14A of the Act and r/w. Rule 8D(2)(iii) of the Income Tax Rules, 1963 (hereinafter as "the Rules") and disallowed an amount of Rs. 70,71,281/-. On appeal, the Ld. CIT(A) partly allowed the grounds raised by the assessee by directing the A.O partly allow the appeal. The relevant portion of the order is extracted as under:

"1.3. I have considered the above submissions and on perusal of the above facts and circumstances of the case, the contention of the appellant are found in order. It is observed that the AO has also considered investments, the return of which are taxable, for the purpose of computation of disallowance under Rule 8D(iii) of the IT Rules. For instance, the appellant has investments in foreign subsidiaries, and the earning from the same is liable to tax. The appellant has similar other investments, wherein the income/returns are taxable. Therefore, on proper verification, the AO is directed to re-compute the disallowance under Rule 8D(2)(iii) of IT Rules read with Section 14A of the Act after

*excluding investments from which no exempt income is earned.
This ground is therefore partly allowed.”*

12. We have considered the orders passed by the Ld. CIT(A) as well as A.O and heard both the sides, we find that the Ld. CIT(A) only directed the A.O to verify entire investments and exclude investments which has no exempt income yielded and direct the A.O to re-compute disallowance of Rule 8D(2)(iii) of the Rules r/w s. 14A of the Act. Hence, we find no infirmity in the order passed by the Ld. CIT(A). Accordingly, these grounds of appeal Nos.2.7 to 3 raised by the Revenue are dismissed.

13. Grounds of appeal No.3.1 to 3.4 relates to disallowance of Board meeting expenditure. The A.O has disallowed an amount of Rs. 3,38,216/- on the ground that the assessee has conducted a Board meeting at Chennai on various dates and has incurred the above expenditure towards travelling, boarding, lodging, credit card expenditure. The case of the A.O is that the assessee's registered office is situated in Delhi, there is no purpose of holding the Board meeting in Chennai therefore, there is no necessity in conducting the Board meeting in Chennai and he is of the opinion that the expenditure is personal in nature and disallowed the same. Before the Ld. CIT(A), it is submitted that the company has its subsidiary and associated office

is in Chennai and some of the Directors are based in Chennai therefore, the Board meeting was conducted in Chennai. The Ld. CIT(A) by considering the above, he directed the A.O to delete the addition.

14. We find that when the assessee is having subsidiary and associated offices in Chennai and some of the Directors are staying at Chennai, it is a business convenience of the assessee to conduct the Board meeting. The A.O cannot decide where the assessee has to conduct the Board meeting. In view of the above, we are of the opinion that the Ld. CIT(A) rightly deleted the addition made by the A.O and we find no infirmity in the order passed by the Ld. CIT(A). Thus, grounds No.3.1 to 3.4 raised by the Revenue are dismissed.

15. Grounds No.3.5 & 3.6 relates to disallowance of car hire charges at Rs. 22,80,000/-. During the year under consideration, the assessee has paid hire charges to M/s. Sonnet Trade and Investments Pvt. Ltd. and Mrs. Anuradha Raghu to the tune of Rs. 22, 80,000/- (Rs. 18,00,000/- and Rs. 4,80,000/- respectively). The case of the A.O is that the assessee has taken a Honda Civic car on rent which is registered in Chennai and the assessee is having no business connection in Chennai therefore, the above expenditure incurred by the

assessee is not a business purpose it is only personal purpose. It is submitted before the A.O that the assessee was conducted meeting at Chennai and the cars were hired for the purpose of business to facilitate the Directors and therefore, the car hire charges are incurred by the assessee for the purpose of business only. By considering the facts of the case, the Ld. CIT(A) directed the A.O to delete the entire addition of Rs. 22,80,000/-.

16. We find that when the assessee is having a subsidiary companies in Chennai and some of the Directors are residing at Chennai and the assessee has hired a car for his Directors for the purpose of business, it cannot be said that it is a personal in nature therefore, the Ld. CIT(A) rightly deleted the addition made by the A.O. By considering the above order passed by the Ld. CIT(A), we find no infirmity in the order passed by the Ld. CIT(A). Thus, grounds No.3.5 & 3.6 raised by the Revenue are dismissed.

17. Hence, all the grounds of appeal raised by the Revenue are dismissed.

18. In the result, the appeal in ITA No.2138/Chny/2017 filed by the Revenue is dismissed.

Order pronounced on 24th September, 2021 in Chennai.

Sd/-
(श्री जी मंजूनाथ)
(G. MANJUNATHA)

लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 24th 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