

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1618/Bang/2017
Assessment Year: 2006-07

M/s. Coimbatore Cable Network Private Limited 642, 4 <sup>th</sup> Main, Indira Nagar Bangalore 560 038  <b>PAN NO : AAACC3712C</b>	<b>Vs.</b>	CIT(Appeals)-2 Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Narendra Jain, A.R.
<b>Respondent by</b>	:	Smt. Priyadarshini Mishra, D.R.

<b>Date of Hearing</b>	:	15.03.2022
<b>Date of Pronouncement</b>	:	15.03.2022

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by Ld. CIT(A)-2. Bengaluru dated 22.2.2017 for the A.Y. 2006-07. The assessee has raised following grounds of appeal:-

- 1. The learned CIT(A)-2 has erred in confirming the action of the AO that the income consequent to sale of shares is assessable under the head “Profits and Gains of Business or Profession” ignoring the fact that the Appellant was holding the shares in question as investments and not as stock in trade and therefore the profit on sale of such shares was rightly assessable under the head “Capital Gains”.*
- 2. The learned CIT(A) and the AO have not appreciated the fact that the Appellant was not dealing in shares and the fact that the only shares held by it were the shares, which were subject matter of sale during the year has been ignored.*

Page 2 of 5

3. *The learned CIT(A) has erred in dismissing the ground of appeal of the appellant relying on the Tribunal Order dismissing the Appellant's appeal against the order under section 263, without appreciating that the Tribunal had only dealt with the jurisdiction issue and not decided the issue on merits.*
  4. *The learned CIT(A) erred in not appreciating the fact that the professional charges were incurred in connection with the sale of shares and should have been allowed while computing income under the head Capital Gains since the expenditure was incurred in connection with the transfer.*
  5. *The CIT(A) has not taken into consideration the copies of invoices raised by JP Morgan Stanley P. Limited and has grossly misrepresented facts by stating that no details or evidence has been furnished in para 4.3 of the order.*
2. Ground Nos.1 to 3 are with regard to treatment of profit as "Income from business/profession" instead of "Capital Gains". In the assessment concluded, the profit from sale of shares of BPL Communication Ltd. was treated as business income and not Long Term capital gains as claimed by the assessee and allowed initially by the AO in order u/s 143(3) on 30.12.2008. This conclusion is based on the order u/s 263 passed by the CIT vide order u/s 263 dated 25.3.2011 holding as under:

*"The Assessing officer is directed to complete the assessment afresh after treating the profit on sale of shares of BPL communications Ltd., as business income and allow such expenditure as it is allowable under law, and has been incurred wholly and exclusively for the purpose of business."*

2.1 As the issue as to whether the income from sale of shares is to be taxed as capital gain or income from business arises from order u/s 263 dated 25.3.2011 passed by the CIT, it cannot be agitated in appeal before us against the order of AO in question. It is, therefore, not an admissible issue before us. It is relevant to mention that, the appeal before this Tribunal against order of CIT u/s 263 of the Act has been dismissed in order of this Tribunal in ITA No.959/Mds/2011 dated 31.10.2011.

3. Further, as seen from the order of the Tribunal in ITA No.959/Mds/2011 dated 31.10.2011, it is crystal clear that the issue relating to the head of income whether income to be assessed under head "income from business or capital gains", it is settled issue as the Tribunal clearly held that:

*"The claim of assessee did not indulge in trading any shares does not hold any water". Further, the shares of BPL Communication Ltd. were acquired based on agreement with one Mr. Suryasamudra Finance & Investment Ltd. and the said agreement dated 1.7.2004 though produced before AO, was never examined by him. Said agreement was filed without the annexures relevant thereto and this finding of Ld. CIT has not been rebutted by the assessee. Conclusion of Ld. CIT that through the said agreement, not only had the assessee acquired shares of BPL Communications Ltd. but had also taken over receivables and liabilities of M/s. Suryasamudra Finance and Investments Pvt. Ltd. has not been disputed by the assessee. There has been a total non-examination of the relevant facts by the A.O. A.O. during the assessment proceedings, never asked for any details vis-à-vis the transaction with M/s. Suryasamudra Finance and Investments Pvt. Ltd. nor had the assessee furnished any such details. So, there has been no examination of the issue as to whether the assessee was indulging in any business activity by trading in shares or whether it was engaged in a business of buying and selling investment. Assessing Officer believed the nomenclature given in the balance sheet and simply accepted the claim of the assessee that the surplus was long term capital gain."*

3.1 Being so, the assessee cannot agitate this issue once again by way of appeal against the CIT(A) order as it has already been decided by the Tribunal while deciding the appeal against the order passed by the CIT u/s 263 of the Act. Accordingly, this ground of appeal is dismissed.

4. With regard to next ground of appeal Nos.4 & 5, the facts are that during the course of re-assessment proceedings, the assessee was asked to submit materials in respect of the expenses incurred to prove the genuineness. Vide letter dated 22.12.2011, filed before the AO, the assessee furnished debit note dated 13.10.2005 for Rs.50,00,000/- debit note dated 14.11.2005 for Rs.4,55,000/-, debit note dated 13.1.20067 for Rs.25,00,000/- and also copy of TDS certificate for Rs.5,09,075/-. It was noticed by the A.O. that other than this, the assessee did not furnish any details to substantiate its

Page 4 of 5

claim. Thus, as per the AO, the details of services rendered by M/s. J.M. Morgain Stanley (P) Ltd., in connection with the share transactions has not been substantiated with supporting materials by the assessee at the time of reassessment or original assessment. The AO was of the view that the assessee has failed to discharge the onus on its to prove the genuineness of the transactions and hence disallowed a sum of Rs.1,02,50,000/- booked under the head legal and professional fees. The CIT(A) confirmed the action of A.O.

5. After hearing both the parties, we are of the opinion that similar issue came for consideration before coordinate bench in the case of co-owner viz. M/s. Epsilon Advisors Pvt. Ltd. in ITA Nos.1569 & 1600/Bang/2014 dated 29.11.2018 in para 12 it was decided as under:-

*“We have considered the rival submissions. We find that even as per the assessment order para 9, this is not the case of the AO that the amount paid to (JMM) is not an allowable expenditure. He has noted that out of total sale consideration of Rs.354.40 crores received by the present assessee and other 3 sister concerns, the present assessee has received only Rs.126.50 crores which is 35.7% and on this basis, he held that only 35.70% of total advisory fees paid to (JMM) is allowable in the hands of the present assessee. He calculated the allowable deduction at Rs.142.80 lacs which is 35.7% of Rs.4 crores paid by the present assessee but even as per the logic of the AO, it should be 35.70% of total advisory fees paid by the group of the present assessee and its three sister concerns, which is Rs.10 crores and 35.70% of Rs.10 crores comes to Rs.357 lacs and not Rs.142.80 lacs. Hence, even as per the stand taken by the AO, the allowable amount comes to Rs.357 lacs out of Rs.400 lacs. But in our considered opinion, in view of the facts of the present case, where it seen tht same amount of Rs.400 lacs is paid by M/s. Vectra holdings Pvt. Ltd. for sale of 260,92,814 shares for a sale proceeds of Rs.70 crores as against 39,50,07,284 shares by the present assessee for sale consideration of Rs.126.50 crores, the amount of fees paid by these four group companies is neither in proportion of sale proceeds nor in proportion of no.of shares sold and the AO says in same para 9 of the assessment order that the amount disallowed by him in the present case of Rs.257.20 lacs can be claimed in the hands of other three sister concerns. Considering all these facts, in our considered opinion, the AO has not made out a case for*

Page 5 of 5

*disallowance of any part of this amount and therefore, the amount paid by the present assessee should be allowed in full as cost of transfer while computing LTCG on sale of shares of BPL. We hold accordingly.”*

6. Respectfully following the above order of the Tribunal, we allow the ground taken by the assessee.

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

Order pronounced in the open court on 15<sup>th</sup> Mar, 2022

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 15<sup>th</sup> Mar, 2022.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**