

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.1191/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT Corporate Circle-2(2), Chennai.	बनाम/ Vs.	M/s. Integrated Securities Ltd. 5 th Floor, Kences Towers, No.1 Ramakrishna Street, T. Nagar Chennai – 600 017.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCC-7054-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar (Advocate) – Ld. A.R
प्रत्यर्थी की ओर से/ Respondent by	:	Shri G. Johnson (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28-03-2022
घोषणा की तारीख / Date of Pronouncement	:	08-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2008-09 arises out of the order of learned Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)] dated 06.03.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31.12.2010. The grounds taken by the revenue read as under: -

1 The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.

2.1 The CIT(A) erred in holding that the income arising from sale of shares is to be taxed under the head "capital gains" and not under the head "Income from business".

2.2 The CIT(A) erred in not considering the fact that for the left-over shares, the assessee had adopted a different/contrary stand in subsequent years by treating the transaction in shares as income under the head business and hence the CIT(A) ought not to have accepted the claim of the assessee to treat the transaction under the capital gains for the instant assessment year under consideration.

2.3 Having regard to the Hon'ble supreme court's decision in the case of CIT vs Sutlej Cotton Mills Supply Agency Limited reported in 100 ITR 706, the CIT(A) ought to have upheld the contention of the AO that the transactions in shares are in assessee's ordinary line of business and hence should be assessable as such.

3 The CIT(A) erred in holding that the transactions with the holding company, M/s Integrated Enterprises India Ltd will not amount to transfer, within the meaning of Sec.145 of the IT Act.

4 Having regards to the provisions of Rule 46A of the IT Rules, the CIT(A) ought to have forwarded the new evidences which were produced before him for the first time, for examination of the Assessing Officer

5 For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commission of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.

The Ld. Sr. DR controverted the findings of Ld. CIT(A) that the transfer of shares was not to be regarded as transfer. The Ld. Sr. DR submitted that the issue under consideration was head of income and additional evidences were admitted by Ld. CIT(A) in violation of Rule 46A and therefore, Ld. AO should be provided an opportunity to consider those evidences. The AR, on the other hand, relied on the Board Circulars and submitted that the shares were shown as investment in the Balance Sheet. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as under.

Assessment Proceedings

2.1 The material facts are that the assessee being resident corporate assessee is stated to be engaged in the business of share broking. The assessee was also engaged in share trading business. The name of

erstwhile assessee i.e., M/s CubShare Brokering Services Ltd. has been changed to M/s Integrated Securities Ltd. w.e.f. 13.01.2008.

2.2 During assessment proceedings, it transpired that the assessee sold shares of Shriram City Union Finance Ltd. (SCUFL) and City Union Bank Ltd. (CUBL) and offered resultant gain of Rs.769.82 Lacs under the head Capital Gains. The details of transactions were as under: -

Name of the Co.	Date of investment	No. of equity	Rate	Value purchases	Date of sale	No. of Equity	Rate	Value sale	Profit
Shriram City Union Finance Ltd.	24.3.06	1200000	145.40	174476238	5.4.07	900000	160	14400000	17523762
					9.4.07	31250	160	500000	
					12.4.07	268750	160	43000000	
		<u>1200000</u>		<u>174476238</u>	<u>1200000</u>	<u>192000000</u>			
City Union Bank Ltd. Out of the above sold	24.3.06	1000000	110.72	110722989					
		750000	110.72	83042242	6.7.07	750000	190	142500000	59457758
								Total	7,69,81,520

The Ld. AO opined that since the assessee was in Share Trading activity, the gains were to be treated as 'Business Income'. The assessee submitted that investment in shares, right from beginning, was treated as 'capital investment' only. The assessee relied on various judicial decisions to support the action.

2.3 However, after perusal of assessee's main objects, Ld. AO observed that the assessee was formed with the main objects of dealing in shares and other securities. The treatment of transactions in Balance Sheet would not be decisive. The sale of shares was assessee's ordinary line of business and therefore, the gains were to be treated as Business Income only. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **CIT V/s Sulej Cotton Mills Supply Agency Ltd. (100 ITR 706)** to support the same. Proceeding further, it

was noted that entire sale had been made to a group concern namely M/s Integrated Enterprises India Ltd. (IEPL) through off-market trades. The shares of CUBL were sold at price of Rs.190/- per share as against prevailing market price of Rs.222/- per share. Accordingly, the difference of Rs.32/- per share was also added to the income of the assessee. The same resulted into another addition of Rs.240 Lacs in the hands of the assessee. Finally, the Business Income was determined as Rs.803.36 Lacs.

Appellate Proceedings

3.1 During appellate proceedings, the assessee reiterated that the shares were shown as investment in the Balance Sheet. The assessee relied on CBDT Circular No.4 dated 15.06.2007 which provide clear guidance to the department while making distinction between shares held as stock-in-trade and shares held as investment. This circular provides that power to purchase and sell shares in the Memorandum of Association is not decisive of the nature of transaction. Rather the substantial nature of transaction, the manner of maintaining books of account, the magnitude of purchase and sale and the ratio between the sale and purchase would furnish a good guide to determine the nature of transactions. Ordinarily the purchase and sale of shares with the motive of earning profit would result in the transaction being in the nature of trade / adventure but where the object of investment was to derive income by way of dividend etc. then the profits so accruing would yield capital gains. It was further submitted that the assessee could be investor as well as stock broker and could hold shares both as investment as well as stock in trade. Reliance was placed, inter-alia, on

the decision of Hon'ble High Court of Madras in the case of **CIT V/s NSS Investments P. Ltd. (277 ITR 149)** to support the arguments.

3.2 Another pertinent fact brought to the notice was that sale of 7.50 Lacs shares of CUBL would not amount to transfer in view of the provisions of Sec. 47(v) of the Act as this transaction was between holding company i.e. M/s Integrated Enterprises India Ltd. (IEPL) and subsidiary company (assessee). The assessee submitted that this fact was put forth during assessment proceedings but the same was not considered by Ld. AO.

3.3 The Ld. CIT(A) noted that recent CBDT Circular No.6/2016 dated 29.02.2016 provide that in respect of listed shares and securities held for a period of more than 12 months, if the assessee desires to treat the income arising thereof as capital gains, the same not be put to dispute by Ld. AO. However, this stand once taken by the assessee in a particular year shall remain applicable in subsequent years also and the taxpayer shall not be allowed to adopt a different / contrary stand in this regard in subsequent years. In the light of said circular, the assessee's claim was held to be a valid claim.

3.4 Regarding applicability of Sec. 47(v) with respect to transactions of CUBL, upon perusal of documents, it was noted by Ld. CIT(A) that the transaction will not amount to transfer within the meaning of Sec.45 of the Act and consequently, there would be no charge of capital gains on the impugned transaction. Thus, the 'capital gains' on these transactions were not to be computed. Consequently, the issue of price differential of share was held to be infructuous.

3.5 The relevant adjudication of Ld. CIT(A) was as under: -

5.1 The matter is considered. The recent CBDT Circular No.6/2016 dated 29.02.2016 deals with the issue of taxability of surplus on sale of shares and securities and their assessability under Capital Gains or Business. The relevant portion of the Circular is reproduced as under:

b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee, desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt in different contrary stand in this regard in subsequent years."

5.1.1 In the light of CBDT's Circular, it is seen that the appellant company has held that relevant securities for more than 12 months, and also disclosed the same as its investments. Hence, the claim of the appellant to treat the transaction under the Capital Gains is a valid claim. The only stipulation being that for the left over shares, it cannot adopt a different/contrary stand in subsequent years. The assessment of these transactions by the AO under the head 'business' stands deleted.

5.2 As mentioned earlier, the shares of M/s. City union Bank Limited were sold to M/s. Integrated Enterprises India Limited, the holding company of the appellant company. During the appellate proceedings, the Id. Authorised Representative produced the following evidences to substantiate that the appellant is a 100% subsidiary of M/s. Integrated Enterprises India Limited.

1. From 20B filed with Registrar of companies, Chennai
2. Schedule v which is annexure to Form 20B
3. Payment challan for having filed Form 20B
4. Annual Financial accounts of the Holding company and Subsidiary Company for 31-03-2008

5.3 On verification of the documents filed, I am satisfied of the correctness of the claim made. The provisions of Section 47(v) of the Act is reproduced asunder:

47 . Nothing contained in section 45 shall apply to the following transfers:

- (i) any distribution of capital assets on the total or partial partition of a Hindu undivided family;
- (ii) [***]
- (iii) any transfer of a capital asset under a gift or will or an irrevocable trust : **Provided** that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf;
- (iv) any transfer of a capital asset by a company to its subsidiary company, if-
 - (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
 - (b) the subsidiary company is an Indian company;
- (v) any transfer of a capital asset by a subsidiary company to the holding company, if—
 - (a) the whole of the share capital of the subsidiary company is held by the holding company, and
 - (b) the holding company is an Indian company :

Provided that nothing contained in clause (iv) or clause (v) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;

5.4 In view of the provisions of Section 47(v), the impugned transaction between the holding company and the appellant subsidiary company will not amount to transfer within the meaning of Section 45 of the Act. Consequently, there can be no charge of capital gains on the impugned transaction. These grounds are allowed.

6. Sale Price of Shares of M/s. City Union Bank Limited:

As I have held that there is no transfer with regard to the transaction in shares of M/s. City Union Bank Limited in the light of provisions of Section 47(v) of the Act, the issue of adjudication on the sale price of the shares for computational purposes, become infructuous, and therefore does not require adjudication.

7. In the result, the appeal is allowed. This order is passed under section 250 read with section 251 of the Act.

Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

4. Upon careful consideration of material facts, the undisputed position that emerges is that the aforesaid transactions have been classified by the assessee in the Books of Accounts as investments. Despite the fact that the main object of the assessee was dealing in shares and securities, it is well settled position that the assessee was entitled to maintain separate portfolios i.e., one for investment and other one as trading assets. This position has been laid down by Hon'ble Bombay High Court in **CIT V/s Gopal Purohit (336 ITR 287)**. The CBDT Circular No.6/2016 dated 29.02.2016, as relied upon by Ld. CIT(A), clearly provide that in respect of listed shares and securities held for a period of more than 12 months, if the assessee desires to treat the income arising thereof as capital gains, the same not be put to dispute by Ld. AO. However, this stand once taken by the assessee in a particular year shall remain applicable in subsequent years also and the taxpayer shall not be allowed to adopt a different / contrary stand in this

regard in subsequent years. Considering the same, the adjudication of Ld. CIT(A), in this regard, could not be faulted with. We order so.

The case law of Hon'ble Supreme Court in the case of **CIT V/s Sulej Cotton Mills Supply Agency Ltd. (100 ITR 706)**, as relied upon by Ld. AO is distinguishable on facts since in that case, it was the finding of the Tribunal that the assessee had purchased shares out of borrowed fund and did not make sale on account of any pressing necessity. The dominant intention of assessee was to make profits on re-sale of shares and not to make investment. However, in the present case, the assessee classifies the transactions as investments and holds the shares for more than one year. There are no allegations that borrowed funds have been used to make these investments.

The decision of Hon'ble High Court of Madras in the case of **CIT V/s NSS Investments P. Ltd. (277 ITR 149)** support the case of the assessee wherein Hon'ble Court dismissed revenue's appeal and held that where shares were never treated by assessee as stock-in-trade and they were held for earning dividend only then the profit on sale of shares in question was to be treated as capital gains instead of business income.

5. Regarding applicability of Sec. 47(v) with respect to transactions of CUBL, we find that Ld. CIT(A) has already verified the documentary evidences submitted by the assessee and thereafter, reached a conclusion that it was a case of transfer of asset by subsidiary company to holding company and therefore, the transaction would be out of purview of capital gain in terms of Sec.47(v) of the Act. These facts remain uncontroverted before us. Upon perusal of assessee's financial statements, we find that the assessee is 100% subsidiary company of

IEPL and this transaction was covered u/s 47(v). This plea was taken by the assessee before Ld. AO which was not dealt with even in the remand proceedings. Therefore, the impugned order, in this regard, could not be faulted with. We order so.

6. Resultantly, the appeal stand dismissed in terms of our above order.

Order pronounced on 08th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 08-06-2022
EDN/-

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF