

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7103/Del/2018
Asstt. Year: 2014-15

ACIT, Circle-26(2) Delhi.	Vs.	VIC Enterprises Pvt. Ltd., 4 th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi – 110 002 PAN AAACV0132B
(Appellant)		(Respondent)

Department by:	Shri Vivek Vardhan, Sr. DR
Assessee by :	Shri M.P. Rastogi, CA
Date of Hearing	30/01/2023
Date of pronouncement	30/01/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-9, New Delhi (**"CIT(A)"**) dated 21.08.2018 pertaining to Assessment Year (**"AY"**) 2014-15.

2. The Revenue has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case the Ld. CIT(A) erred in allowing relief to the assessee on the issue of treatment of claim of LTCG of Rs.4,06,51,736/- as Business Income by the AO without appreciating the detailed justification given by the AO.

2. On the facts and circumstances of the case the Ld. CIT(A) erred in allowing relief to the assessee on the issue of treatment of claim of LTCG of Rs.4,06,51,736/- as Business Income by the AO despite holding at para 5.3

and 5.4 that investment in shares & securities by the assessee of its own group or in unrelated companies, whether listed or unlisted, are part of the business activities and any profit/gain out of these transactions are required to be treated as business income.

3. "On the facts and circumstance of the case the order of the Ld.CIT(A) is perverse."

3. The brief facts are that the assessee company is stated to be engaged in the business of trading units, shares, securities, debentures etc. It filed its return for AY 2014-15 on 26.11.2014 declaring income of Rs. 1,23,88,597/-. After processing of the return under section 143(1) of the Income-Tax Act, 1961 (**the "Act"**), the case of the assessee was selected for scrutiny under CASS. During assessment proceedings, the Ld. Assessing Officer (**"AO"**) required the assessee to show-cause why long term capital gain (**"LTCG"**) of Rs. 4,06,51,736/- declared by it be not considered as its business income and taxed accordingly. Vide letter dated 11.11.2016, the assessee submitted a detailed reply which has been incorporated by the Ld.AO in the assessment order. In short, the assessee explained that the nature of holding is by way of capital assets defined under section 2(14) of the Act and disposal of such capital assets in accordance with the provisions of the Act gives rise to capital gain only. Accordingly, on disposal of such investment, the assessee declared the said income in its return and claimed exemption under section 10(38) of the Act, denial of which is clearly illegal. The assessee relied on numerous case laws in support and emphasized that the assessee has clearly demarcated its portfolio whether to keep its deployment of funds as investment or stock in trade as evidenced by the accounts placed on record. Perusal thereof will clearly indicate that except the mutual fund investment, the rest of the portfolio has been held by the assessee as investment only and accordingly treated the same as liable for taxation under investment/profit and gains. It was asserted that in view of the conduct of the assessee, the period of holding of shares by the assessee, manner of maintaining of books of account of held shares as investment by the assessee, frequency of dealing being minimal to the total holding of the

assessee, the LTCG declared by the assessee be accepted. Referring to para 3(b) of the CBDT Circular No.6/2016 dated 29.02.2016, it was urged before the Ld. AO that the capital gain declared by the assessee on sale of listed security cannot be assessed as business income.

4. The explanation offered by the assessee was not acceptable to the Ld. AO. Relying on the recital of one of the main objects in the Memorandum of Association of the Company and taking note of the facts of the assessee's case that it has shown income from business at Rs. 1,30,20,446/-; income from LTCG on sale of shares shown exempt at Rs. 4,06,51,736/- under section 10(38) of the Act; and income from dividend at Rs. 36,54,02,368/-, the Ld. AO arrived at the conclusion that the assessee is carrying on business of trading in shares. Accordingly, he taxed the LTCG of Rs. 4,06,51,736/- declared by the assessee as its income from business in his assessment order dated 07.12,2016 passed under section 143(3) of the Act.

5. Aggrieved thereby, the assessee filed appeal before the Ld. CIT(A). During appellate proceedings also, the assessee filed written submission which has been incorporated by the Ld. CIT(A) in para 5.1 of his order. On consideration thereof, the Ld. CIT(A) held that the impugned income shown of Rs. 4,06,51,735/- is income from capital gain and not income from business by observing in para 5.2, 5.3, 5.4 and 5.5 of his order as under:

"5.2 I have perused the submission of the appellant and order of the AO. The assessee is engaged in trading in units of mutual funds as well as investment in shares. The appellant has declared capital gain of Rs.40651735/- on account of sale of shares. The AO held that on perusal of memorandum of association of the company it was observed that assessee's interest is to do trading in shares securities and units. On the basis of frequency of sale of shares it was held that capital gain declared is business income. As against the appellant has submitted that assessee is also investor and the investment made in equity shares are always made in the investment portfolio and its desire to hold a longer period of time with an intention to have capital appreciation and dividend from any. It is claimed by the AR that in the instant case of appellant the object is not to make profit in the course of trading activity but with the view to make investment in shares and to derive income by way of dividend and capital gain and that the appellant has held the aforesaid investments as capital assets as defined

u/s 2(14) and that the method of holding in investment is bonafide one and is being regularly followed thereafter also. The method of valuation adopted by the appellant at cost price on a permanent basis and no adhoc. Further it has submitted that there is no bar for the same assessee to do business in shares and hold the same shares as investment.

5.3 On careful consideration of the fact, it is noted that the appellant company which is an NBFC, has various main objectives as mentioned in the Memorandum and Article of Association, which inter alia includes investment in shares & equity as one of the business activities. In fact, for an NBFC all the activities of dealing in shares & securities whether held as stock-in-trade or investment of short or long term tantamount to business activities only. It would be worth referring to Authority for Advance Ruling (AAR)' judgment in the case of AAR No. 445/98, where in Hon'ble Justice Suhas C Sen, observed & held as under:

“The next question is about the classification of the profits made by the applicant from realisation of portfolio investment made in India. If the amount invested in the various securities in India is treated as part of the business transaction of the applicant then the investments will have to be treated as part of normal business activity of the life insurance business carried on by the applicant If the income from the realisation of this portfolio investments are treated as business income, Article 7 of the Treaty will be attracted. But if the realisations are treated as capital gains, the amount will have to be taxed in the manner laid down in the Article 14 of the Treaty.”

The applicant stated that a portion of the receipts of the applicant from the policy holders is utilized in running its business. The balance is used for purpose of making portfolio investments. It has been stated that this investment is to generate sufficient funds for meeting the future claims of the policy holders and also to make payments to the policy holders under the transfer of the policy agreements. Therefore, the portfolio investments are part of the company's regular business activity, Elaborate arrangements have been made by the applicant for getting expert advice and for making proper investments. Such activities cannot be treated as anything other than a well organised business activity. The company has to generate money in order to pay the insurance claims and also pay the policy holders in terms of the policy. It has also to make profits. It is well settled that the profit made on sale of shares and securities would be capital if the seller is an ordinary investor realising his investments in shares. If a person carries on business in securities and shares and then the profit generated clearly be business income. But if a bank or an insurance company buys and sells shares in course of usual banking and insurance business, it will be business income because investment and realisation of shares or securities are made in the course of carrying on of the banking or insurance business. In Northern Assurance Co. Vs. Russell 2 Tax Cases 551 the insurance company in course of its business derived profits from sale of investments at a larger price than was paid for them. It was held that the profits were chargeable to tax as trading receipts.

In the case of Royal Insurance Co. Ltd. Vs. Stephen 14 Tax Cases 22, an insurance company had made investment in various railway stocks. These investments were exchanged for new stock as a result of amalgamation of the railway company with the other railway companies. The market value of the new stocks was less than the original cost of old stocks. The insurance company claimed that the loss was deductible as a trading loss. It was held in that case that in effect the old investments have been realised and the new investments have been made. The applicant has suffered loss which was clearly deductible as trading loss.

What is important to note that in all these cases of insurance companies the view taken was that the investment was in course of business. We have not been shown any special feature to take a view that the insurance company's purchase of shares was anything other than an activity in course of its usual business activity.

The principle applicable to cases where investments were made by a Bank or an Insurance Company has been stated by the Privy Council in the case of Punjab Co-operative Bank Ltd. Vs. Commissioner of Income Tax, 8 I.T.R. 635. The principle enunciated in that case is that the liability to tax arises on sales of investments where the sales are in course of business. The bank may not be carrying on a separate and severable business of buying and selling investments with a view to make profit

What is important to bear in mind in this case is that the investments in shares that are being made by the Insurance Company are incidental to its insurance business. It is not a distinct and separate line of business quite apart from the insurance business. The shares may be shown in the capital account of the Company. That however will not make any difference to the basic principle. If the shares are purchased in normal course of carrying on of insurance business, the transaction must be a part of the company's business transaction.

5.4 In the case of appellant when juxtaposed with postulation noted above, investment in shares & securities of its own group or in unrelated companies whether listed or unlisted are definitely the part of business activities and therefore, any profit / gain arising out of transactions in those investments requires to be treated under the head "Profit & Gain" from "Business & Profession".

5.5 However, for the fact that issue is apparently found to have been decided by Hon'ble ITAT Bench, Delhi in the Appellant favour in AY 2006-07 & 2008-09, respectfully following the above, I hold that the income shown of Rs.40651735/- is from income from capital gain and not from business income. The ground of appeal is therefore, allowed."

6. The Revenue is dissatisfied and is before the Tribunal. All the three grounds of appeal relate thereto.

7. The Ld. DR supported the order of the Ld. AO and reiterated the point of view of the Ld. AO. Whereas, the Ld. AR submitted that the issue is

covered by the decisions of the Tribunal in assessee's own case pertaining to AYs 2006-07, 2007-08, 2008-09, 2009-10 and 2011-12, copies of which have been placed at pages 1-104 of the assessee's paper book. The Ld. DR could not establish with evidence that the case of the assessee under consideration is in anyway dissimilar to those of the earlier years.

8. We have heard the parties, considered their arguments and perused the records. The facts are not in dispute. The Ld. CIT(A) has followed the Tribunal's decisions in the assessee's own case pertaining the AYs 2006-07 and 2008-09. The latest decision rendered by the Tribunal is dated 07.02.2020 in ITA No.1893/Del/2017 for AY 2011-12 wherein the Tribunal observed as under:

"4. The similar issue in the assessee's own case stands adjudicated by the Co-ordinate Bench of the Tribunal for the assessment years 2006-07, 2008-09 and 2010-11 in ITA Nos. 2863/Del/2010, 3911/Del/2011 and 3635/Del/2011.

5. At the outset, both the parties accepted to the preposition that there has been no change in the factum except the amounts involved. Since, the matter already stands adjudicated in the absence of any material changes, we hereby dismiss the appeal of the revenue. For the sake of ready reference, the relevant portion of the ground no. 2 and ground no. 5 in the order dated 22.12.2015 is hereby reproduced.

"The following additions/disallowances were made by the Assessing Officer in the assessment framed under sec. 143(3) of the Income-tax Act, 1961:

S. No.	Nature of addition/issue	Amount in(Rs.)	Grounds of appeal raised
1.	Long Term Capital Gain treated as business income	34,61,63,879	Ground Nos.1 to 9
2.	Short term capital gain Treated as business income	6,71,16,180	Ground Nos.10 to 18
3.	Interest income	9,00,000	Ground No.19
4.	Disallowance u/s.14A	5,33,768	GroundNos.20 to 22 (not pressed

6. The assessee questioned the above addition before the Learned CIT(Appeals) raising the issue regarding taxing the pro fits realized on sale of shares as business income against capital gain offered by the assessee either under long term capital gain or short term capital gain depending upon the period of holding o f the shares. The view o f the

Assessing Officer was that the assessee's intention was to do trading in shares, securities and units. The Assessing Officer did not accept the explanation of the assessee and held that the assessee has carried on a regular trading in shares, securities and units. The voluminous transaction carried on by the assessee during the year on various scripts is self-explanatory. The Assessing Officer noted that the assessee had shown income from business to the tune of Rs.1,15,44,84,872.67 and purchase of shares shown as Rs.1,46,27,37,974.36. It had also shown increase or decrease in stock to the tune of Rs.30,84,64,940.67 whereas other income was shown at Rs.53,69,66,060.68. Noting these aspects, the Assessing Officer came to the conclusion that assessee is carrying on business of trading in shares, securities and units. In support, he also noted the frequency of trading in different scripts except Dowar India Ltd.'s shares done on regular basis. The Assessing Officer tried to distinguish the case laws relied upon by the assessee and held that all the alleged long term capital gain of Rs.34,61,63,879 shown by the assessee in its return of income is business income and taxed the same accordingly. On the submission of the assessee regarding the principles of consistency, the Assessing Officer rejected the same with this finding that each assessment year is a different unit.

7. The Assessing Officer also treated the short term capital gain claimed by the assessee at Rs.6,71,16,180 as business income adopting the same observation as made by him hereinabove in relation to the claimed long term capital gain.

8. The Learned CIT(Appeals) did not agree with the Assessing Officer regarding treatment given by the Assessing Officer to the claimed long term capital gain of Rs.34,61,63,879 as business income and allowed the claim of the assessee with this finding that the assessee has rightly treated the amount as long term capital gain and thus is eligible for exemption under sec. 10(38) of the Act. This action of the Learned CIT(Appeals) has been questioned by the Revenue before us.

9. The Learned CIT(Appeals) has, however, upheld the action of the Assessing Officer treating the claimed short term capital gain of Rs.6,71,16,180 and loss of Rs.47,82,051 (net gain Rs.6,23,34,128) as business income. This action of the first appellate authority has been questioned by the assessee in its above appeals.

10. In support of ground Nos. 1 and 2 of the appeal preferred by the Revenue, the Learned CIT(DR) has basically placed reliance on the assessment order. He referred contents of page Nos. 17 to 20 of the assessment order with the submission that frequency and volumes of the transactions suggest that it was not a case of investment but business. The assessee has converted stock in trade to investments. He placed reliance on the decision of the Authority for Advance Ruling in the case of Fidelity 7 Group reported in 288 ITR 641 (AAR). He submitted that where a company purchases and sells shares, it must be shown that they were held as stock in trade and that existence of the power to purchase and sell shares in the Memorandum of Association is not of decisive of the nature of transaction. He submitted that the substantial nature of transactions, the manner of maintaining books of account, the magnitude of purchases and sells and the ratios between purchases and sells and the holding period would furnish a good guide to determine the nature of transaction. He contended that ordinarily the purchase and sale of shares with the motive of earning a profit would result in transaction being in the nature of trade/adventure in the nature of trade but where the objects of investment in shares of a company is to derive income by way of

dividend etc. then the profits accruing by change in such investment "by sale of shares" will yield capital gain and not Revenue receipts. The learned CIT(DR) also referred the decision of Hon'ble Supreme Court in the case of CIT vs. H. Holck Larsen – 160 ITR 67 (S.C) holding that as to whether transactions of sale and purchase of shares were trading transaction or whether these were in the nature of investment is not a question of law but it is a mixed question of law and facts. The learned CIT(DR) referred page No. 18 of the assessment order to support his submissions that there were lot of frequency and volumes of transaction. The assessee had also not paid security transaction tax on the sale of shares. He submitted that before the Assessing Officer, the assessee had not pointed out that it is promoter of Dawar India. The Learned CIT(DR) submitted that finding of the Learned CIT(Appeals) on the payment of security transaction tax (STT) is misleading. He submitted that the assessee had not maintained two port folios to support its submission that it was trading in shares as well besides making investment in shares. The assessee is in the business of nonbanking finance, hence the shares transaction was part of its business. The Learned CIT(Appeals) on general findings has given the relief to the assessee by accepting the claimed long term capital gain as such.

11. The Learned AR on the other hand placed reliance on the First Appellate Order on the issue. He submitted that the assessee is one of the holding company of Dawar India. He submitted that investment therein was made 20 years back and the same are being shown as investment in the books of account. He submitted that during the year, the assessee had sold 23,55,000 shares of Dabur India Ltd. and realized profit under the head "long term capital gains" and claimed exemption under sec. 10(38) of the Act. Similarly, the assessee sold shares of certain other companies and the gain realized was offered under the head "long term capital gain" as period of holding was more than one year and claimed exemption. In support, he referred page No. 137 of the paper book having details of such shares. In addition to the above, the assessee also sold shares of various other companies (approximately 170) and offered the gains under the head "short term capital gain", since the period of holding in those transactions was less than one year. In support, the Learned AR referred page Nos. 142 to 146 of the paper book. The assessee had also applied special rate of taxation thereon as prescribed under sec. 111A of the Act, made available at page No. 141 of P.B. The Learned AR also referred Board Resolution (Page No. 215 of P.B.), extract of investment ledger account (Page No. 216-217 of P.B.), financial statement with audit report (page 6 Nos. 218 to 244 of P.B.) and Memorandum of Association (page Nos. 243 to 263 of P.B.).

12. The Learned AR submitted that as submitted above, the shares of Dawar India Ltd. have been held by the assessee as investment as a promoter for controlling interest and this position was accepted by the Department up to the assessment year 2005-06. The intention of the assessee behind the transaction is significant and frequency of transaction alone would not decide the issue ipso facto. He submitted that the assessee can hold shares either as investment or as stock in trade as clarified by the CBDT Circular No. 4 of 2007 dated 15.6.2007. He pointed out that entries in the books of account prove that shares in question were held as investment. He submitted that in the case of group companies, the profit on sale of shares of Dawar India Ltd. was allowed to be taxed under the head "capital gain". The Learned AR referred computation of income, details of long term capital gain on which STT was paid and benefit under sec. 10(38) of the Income-tax Act, 1961 was claimed, and details of short term capital gain on which STT was paid and benefit under sec. 111A of the Act was

claimed, made available in concise form at page Nos. 1 to 11 of the paper book. He submitted that up to assessment year 2004-05, the assessee had been maintaining two portfolios. Since assessment year 2005-06, the assessee is dealing only in investment and major component is shares of Dawar India Ltd. There is no prohibition in law to convert stock in trade to investment account. In this regard, he placed reliance on the decision of Hon'ble High Court of Delhi in the case of CIT vs. Express Security Pvt. Ltd. - 364 ITR 488 (Del.). The Learned AR submitted further that the contents of memorandum cannot be a sole basis but entirety of facts relating to the transaction is to be examined to find out the nature of the transaction as to whether it is investment or trade. The Learned AR submitted that STT was very much paid on the said transaction and referred page No. 236 (Schedule K) of the paper book. The learned AR submitted further that so far shares of Dabur India Ltd. are concerned, the assessee is also enjoying the managing/majority control on the group and in the books, its shares have been valued on cost price as investment. In this regard, he placed reliance on the following decisions: i) Felspar Credit and Investment Pvt. Ltd. vs. CIT - 346 ITR 121 (Madras); ii) Raja Bahadur Kamakhya Narain Singh vs. CIT - 77 ITR 253 (S.C)

13. The Learned AR submitted further that in its books of account, the assessee has valued the shares at cost price as investment and referred page No. 228 of the paper book in support. He submitted further that assessee had sufficient interest income and referred page No. 236 of the paper book in support. He submitted that dividends were also received during the year. The Learned AR also placed reliance on the following decisions:

- i) CIT vs. Chowdry Associates – ITA No. 544/2013 – order dated 30.1.2015 (Delhi High Court);*
- ii) CIT vs. Ashok Wadia – 2014-TIOL-518-H.C-Del-IT;*
- iii) Bengal & Assam Investors Ltd. vs. CIT – 2002 – TIOL-705- S.C-IT.*
- iv) Slocum Investment Pvt. Ltd. vs. DCIT – 2006- TIOL-300- ITAT-Delhi;*
- v) Ram Narain Sons Pvt. Ltd. vs. CIT – 41 ITR 534 (S.C);*
- vi) Karnataka State Ind. Investment & Dev. Corpn. Ltd. vs. DCIT – 59 ITD 643 (Bang.);*
- vii) CIT vs. Gopal Purohit – 2010-TIOL-129-S.CMUM-IT;*
- viii) CIT vs . Devasan Investment P. Ltd. - 365 ITR 452 (Del.);*

14. Considering the above submission, we find that in its recent decision, the Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Ashok Wadia (supra) has been pleased to hold that the legal standards concerning whether income is to be treated as business income or short term capital gain have been the subject matter of various decisions of the Hon'ble Supreme Court and Hon'ble Delhi High Court. Suffice it to say that there is no single, universal standard to distinguish the two. The court ITA No. 1893/Del/2017 VIC Enterprises Pvt. Ltd. 8 must instead look into the nature of the shares, the volume and frequency of the transaction, the manner in which the shares have been shown by the assessee in its books of account, dividend earned on the shares, if any. Rarely will any one factor be conclusive, the purpose of the exercise is to ascertain the true intention through a composite test. In some cases, volume becomes determinative, in others, the duration of times, it is held, at times it can be the manner it is shown in the books, whereas still, the use of borrowed funds could be decisive.

15. The decision relied upon by the Learned AR referred above suggest that the very intention with which the shares have been purchased is the basic test to arrive at a

conclusion as to whether the share transaction is investment or trade and this intention can be gathered on the basis of surrounding circumstances including the factors like period of holdings, volume and frequency of transactions in shares. What was the intention of the assessee at the time of purchase of these shares can be found out from the treatment it gives to such purchase in its books of account whether the assessee has borrowed money to purchase and paid interest thereon as normally money is borrowed to purchase goods for the purposes of trade and not for investing in an asset for retaining. What is the frequency of such purchases and disposal in that particular item. Whether purchase and sale is for realizing profit or purchases are made for retention and appreciation in its value. How the value of items has been taken in the balance sheet and how the assessee is authorized in memorandum of association/article of association. These are the main factors to draw an inference that the transaction in question is with intention to invest or to trade. When we examine facts of the present case in view of these tests, we find that the assessee, a non-banking finance company registered with Reserve Bank of India, is one of the promoter company of Dabur India Ltd.

15.1 The Learned CIT(Appeals) has dealt with the issue as under:

"7. I have gone through the assessment order and the written submissions filed by the AR in this regard.

8. As already stated the assessee is a NBFC and the assessee company is one of the promoter companies of Dabur India Ltd. and the 'controlling interest of all the group companies as on 31.03.2005 is as under:

Promoters of Dabur India Ltd .	No . of shares held on 31.03 .2005	% age of holding
1. VieEnterprises Pvt.Ltd .	37430000	13.07%
2.Gya~ Enterprises Pvt. Ltd .	37250330	13.01%
3. Chowdry Associates	37438340	12.99%
4. Puran Associates Pvt. Ltd .	37352000	13.04%
5. ACEE Enterprises	37191990	12.99%
6. ~atna Commercial Enterprises Pvt. Ltd .	36456330	12.73%
Total promoters holding	223118990	77.90%
7. Public, Fls. Mutual Fund etc.	63300723	22.10%
Total number of shares of DIL (paid up)	286419713	100%

9.1 The assessee company has been holding the shares of Dabur India Ltd. over a period of time and the same are shown as investments in the books of account. During the F.Y.2005-06 relevant for the impugned assessment year, the assessee sold 23,55,000 shares of M/s. Dabur India Ltd. and realized profit under the head Long Term Capital Gains (LTCG) and claimed exemption u/s 10(38).

9.2 Similarly the assessee sold shares of certain other companies and the gain realized was offered under the head LTCG (since the period of holding is more than one year) and claimed exemption u/s.10(38) as detailed vide Annexure-A.

9.3 In addition to the above, the assessee sold shares of various other companies (approximately 170) and offered the gains under the head Short Term Capital Gains (STCG) - since the period of holding is less than one year - and applied special rate of taxation as prescribed u/s. 111A as 15 detailed vide Annexure-B.

10.1 The main contentions of the AO as seen from the assessment order are as under:

- One of the main objects of the assessee company is to do business in shares, stocks, debenture stocks, bonds, obligations, units, securities etc as per the Memorandum of the Association of the appellant company.
- The assessee carried on the activity of purchase and sale of shares on regular basis.
- The volume of purchase and sale of share (volume of business) is huge.
- Frequency of transactions is very high except in shares of Dabur India Ltd.
- Conduct of the assessee is that of a trader in shares.
- No proper records are maintained as per report u/s 142(A) issued by the special auditor.
- Certain Shares are held as investment to get tax exemption u/s. 10(38).

10.2 The AO relied on the following case laws:

- CIT vs. Associated Industrial Development Co. Ltd. 82 ITR 586 (Se)
 - Karampura Development Co. Ltd. Vs. CIT 44 ITR 362 (Se)
 - Dalmiya cements Ltd. vs. CIT 12 ITR 50 (Patna)
 - CIT vs. British Paints 188 ITR 44, 49 (SC)
- 11.1 The main contentions of the AR as gathered from the various submissions made are as under:
- Shares of Dabur India Ltd. have been held as investment is by the assessee as a promoter for controlling interest for over two decades. This position was accepted by the Department up to A.Y. 2005-06.
 - The intention of the assessee is of paramount significance and frequency of transactions would not decide the issue ipso facto.
 - The assessee can hold shares either as investment or as stock in trade as clarified in Board Circular No. 4 of 2007 dated 15th June 2007.
 - Entries in the books of account prove that shares in question are held as investment.
 - In the case of group companies, the profit on sale of shares of Dabur India Ltd. was allowed to be taxed under the head capital gain.

11.2 The AR relied on the following case laws:

- Bengal and Assam Investors Ltd. vs. CIT (2002-TIOL-705-SC-IT) 16
- Slocum Investment Pvt. Ltd. vs. DCIT (2006-TIOL300-ITAT-Del)
- Ramnarain sons Private Limited vs. CIT 41 ITR 534 (sq • Karnataka State Industrial Investment and Development Corporation Limited vs. DCIT 59 ITD 643 (Banglore)
- CIT vs. Gopal Purohit (2010-TIOL-129-HC-MUM-IT)

12.1.1 In the case of Sarnath Infrastructure (P) Ltd. Vs. Asstt.CIT (2008) 16 DTR (Lucknow)(Trib) 97, the Tribunal has considered almost all the important judicial decisions laying down legal principles to determine the nature of transaction i.e. trading transaction or investment in the light of CBDT Circular No. 4 of 2007. The Tribunal has summarized the principles in para 13 of the said order. For the sake of ready reference, the same are reproduced as under:

"After considering above rulings we cull out following principles, which can be applied on the facts of a case to find out whether transactions (s) in question are in the nature of trade or are merely for investment purposes:

1) What is the intention of the assessee at the time of purchase of the shares (or any other item)? This can be found out from the treatment it gives to such purchase in its books of account. Whether it is treated as stock-in-trade or investment? Whether shown in opening/closing stock or shown separately as investment or non-trading asset?

2) Whether assessee has borrowed money to purchase and paid interest thereon? Normally, money is borrowed to purchase goods for the purposes of trade and not for investing in an asset for retaining.

3) What is the frequency of such purchases and disposal in that particular item? If purchase and sale are frequent, or there are substantial transactions in that item, it would indicate trade. Habitual dealing in that particular item is indicative of intention of trade. Similarly, ratio between the purchases and sales and the holdings may show whether the assessee is trading or investment (high transactions and low holdings indicate trade whereas low transactions and high holdings indicate investment).

4) Whether purchase and sale is for realizing profit or purchases are made for retention and appreciation in its value? Former will indicate intention of trade and later, an investment. In the case of shares whether intention was to enjoy dividend and not merely earn profit on sale and purchase of shares? A commercial motive is an essential ingredient of trade."

16. The assessee has been holding shares of Dawar India Ltd. for almost two decades and the same were shown as investment in the books of account. During the year under consideration, the assessee sold 23,55,000 shares of Dawar India Ltd. out of total of its holding of 3,74,30,000 shares. The details of all these shares sold during the year on which the assessee has claimed long term capital gain are as under:

Promoters of Dabur India Ltd .	No . of shares held on 31.03 .2005	% age of holding
1. Vle Enterprises Pvt. Ltd	37430000	13.07%
2. Gyan Enterprises Pvt. Ltd	37250330	13.01%
3. Chowdry Associates	37438340	13.07%
4. Puran Associates Pvt. Ltd	37352000	13.04%
5. ACEE Enterprises	37191990	12.99%
6. ~atna Commercial Enterprises Pvt. Ltd .	36456330	12.73%
Total promoters holding	223118990	77.90%
7. Public, Fls. Mutual Fund etc.	63300723	22.10%
Total number of shares of DIL (paid up)	286419713	100%

17. The assessee had offered the profit/gain on purchase and sale of units of mutual funds as business income on the basis that the said activity constitutes regular business activity. However, the profits/gains realized on purchase and sale of shares were offered under the head "capital gain" on the basis that the shares have been held as investment in the books of account. There is no dispute that intention and the entries in the books showing the shares as investment is the guiding and determining factors. This fact has also not been denied that the gain realized on sale of shares of Dawar India Ltd. in financial year 1989-90 (relevant for assessment year 1990-91) was offered to tax under the head "capital gain" by Gyan Enterprises Pvt. Ltd ., which is one of the co-promoters of Dawar India Ltd. The Assessing Officer taxed the same as business income against which Gyan Enterprises Pvt. Ltd. preferred first appeal and the Learned CIT(Appeals) accepted the contention of the assessee that the gain should be assessed under the head "capital gain" . The said First Appellate Order was upheld by the ITAT vide its order dated 12 .1 .2004 in ITA No . 2160/Del/1990 for assessment year 1990-91.

18. The details of number of shares of Dabur India Ltd. held by the assessee over a period of time and the transaction/changes are follows:

Date as on	No . of shares (in lakhs)	Remarks
31.03.1996	37.15	No change in holding
31 .03.1997	37.51	No change in holding
31 .03.1998	37.41	Sold 1000 shares
31 .03.1999	37.41	No change in holding
31 .03.2000	37.41	No change in holding
31 .03.2001	37.41	No change in holding
31 .03.2002	37.41	No change in holding
31 .03.2003	37.41	No change in holding
31 .03.2004	37.41	No change in holding
31 .03.2005	374.30	Paid up value of Rs.10 per Sh. Is reduced to Rs.1 each and purchased 20000 shares (37.41x10)+20=374 .3
31.03.2006	725.78	Bonus o f 1 share for 1 share held , allotted and Sold 1 .41 lacs shares before bonus and sold 20 lacs shares after bonus (374.30-1.41)x2=745.78 745 .78-20=725 .78

19. Thus, it is very clear from the above detail that shares of Dawar India Ltd. were held as investment. From the details of other shares given above, it is also apparent that those shares were held for considerable long time. Transaction of these shares has not been carried out on regular basis as gathered from the details of the number o f shares and transactions. From the following table, it is apparent that in the following income from business, 20 investment at income from other sources , the assessee has earned dividend income of Rs.12 ,00,86 ,699:

Particulars	Asset Type	Income Amount in Rs
Income from Business(A)	a)Trading in unit s o f Mutual Fund s	Gross Income Of Rs33 lakhs
Income from Capital Gains , treated as Other Income in Profit and Loss A/c (B)	Income from Capital Asset s– Investment in Shares both listed And unlisted LTCG ,-34 ,61 ,63 ,879(84 .75%) STCG-6 ,23 ,34	Rs.40 .85 crores

	,129(15 .25%)	
Income from other Sources(C)	Dividend earned from Investment in equities	12,00,86,699

19.1 The assessee has earned above dividend out of Rs.44 .72 crores of investment in equities. During the year, the assessee has made purchase of Rs.45 .07 crores against sale of only Rs.59.75 crores.

19.2 The treatment of income from above three income streams are based on accounting principles and standards as issued by Institute of Chartered Accountants of India and the assessee has consistently followed the same accounting principles over the years. The significant accounting policies adopted by the Company are disclosed in Schedule L – refer Annexure 2. The accounting policies are important here as it lays down how the treatment of various classes of assets is measured.

19.3 Schedule L (on Investments) to the Balance Sheet enclosed along with return that long –term investments are stated at cost less permanent diminution in value of investments only. The Investments (Other than Trade) of Rs 44 .71 crores as on 31 March 2006 are detailed in Schedule F of the Balance Sheet. The aforesaid investments are made upon the decision made by Board of Directors and with clear intention to hold the aforesaid Capital Assets as investment. The intention of the assessee is therefore never to make profit from sales as in the case of trading activities. The intention is to have steady and substantial capital appreciation and earn dividends if any from such investment.

19.4 As regards, trading stock where the assessee intends to make profits , such stock has been disclosed in Schedule I of the Balance sheet showing a closing value of Rs 30 .85 crores on 31 March 2006. The accounting policy for trading of shares is disclosed in Schedule L of the Balance sheet which states that “closing stock of securities is valued at cost of market price whichever is lower.

19.5 Thus, the intention of the assessee is very much clear as to what stocks are to be treated as business stock and what to be treated as investment stock. The Policy and treatment of stock transaction are clearly reflected in the Balance sheet of the assessee .

19.6 We thus fully concur with the finding of the Learned CIT(Appeals) that the profit of Rs.34 ,61,63 ,879 in respect of shares sold during the year (including gain of Rs 29,05 ,58 ,750 realized on sale of shares of Dawar India Ltd.) has been rightly treated by the assessee as long term capital gain and thus the Learned CIT(Appeals) has rightly held that the assessee is eligible for exemption under sec. 10(38) of the Act on the said long term capital gain. The First Appellate Order in this regard is thus upheld. The ground Nos. 1 and 2 are accordingly rejected.”

9. Since the facts and circumstances remain the same in AY 2014-15, respectfully following the decision (supra), we do not find substance in the appeal of the Revenue which we hereby reject.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 30th January, 2023.

sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMEBR**

Dated: 30.01.2023
*Mohan Lal**

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	