

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 551/MUM/2023
Assessment Year: 2013-14

Dy. CIT-41(2)(1),
Room No. 623, 6th floor,
Kautilya Bhavan, Bandra Kurla
Complex, Bandra (E),
Mumbai-400051.

PAN No. AATPP 1470 C
Appellant

Vs.

Sangeeta Dilip Patil,
111, Marathon Max
Mulund Goregoan Link
Road, Mulund (W),
Mumbai-400080.

Respondent

Assessee by : Mr. Fenil Bhatt, AR
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 25/04/2023
Date of pronouncement : 27/04/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 20.12.2022 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2013-14, raising following grounds:

1. *"Whether on the facts and circumstances of the case the Ld. CIT(A) erred in holding that sale consideration received on account of sale of shares of M/ Trivector Origio Scientific Pvt. Ltd. (TOSPL) amounting to*



Rs.11,03,10,171/-is capital gain only and not business income as per provision of section u/s 28(ii)(a) of the Act, 1961, holding that the income received only sale of shares without appreciating the fact that when the assessee sold entire share held by herself, the managerial control itself terminated and the assessee no more part of the management of the said company."

2. *"Whether on the facts and circumstances of the case the Ld.CIT(A) erred in holding that the assessee has not received any income for termination of her management control in the ongoing company without appreciating the fact that consideration received includes the income received on termination of her management control as she has sold entire shares held by her."*
3. *"Whether on the facts and circumstances of the case the Ld.CIT(A) has erred in not appreciating the CBDT Circular F.No.225/12/2016/ITA.I| dated 02.05.2016."*

2. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. In the case, dispute is regarding gain on sale of the shares of M/s Trivector Origio Scientific Pvt. Ltd. (TOSPL) amounting to Rs.11,03,10,171/- whether it has to be taxed under the head 'capital gain' as claimed by the assessee or under the head 'profit and gains of the business' u/s 28(ii)(a) of the Income-tax Act, 1961 (in short 'the Act') as held by the Assessing Officer and confirmed by the Ld. CIT(A). We find that the Ld. CIT(A) has decided the issue in favour of the assessee following his own finding in assessment year 2015-16. The relevant finding of the Ld. CIT(A) is reproduced as under:

"5.11 Further it is seen that the appellant's own case for the A.Y 2015-16, the CIT(A) has passed the order in favor



of the appellant on similar issue. I find that the issue has been discussed threadbare in AY 2015-16. Relevant extract of the order is reproduced as under:

"Thus, the appellant has rightly offered the LTCG for taxation, which is supported by the CBDT circular F. No. 225/12/2016/ITA.II dated 02/05/2016 where in it was clarified that in case of sale of unlisted shares, following procedure of taxation should be adopted to maintain consistency thereby taxing the profits on sale of shares as capital gain. The above said circular vide para 2 clearly stated that "for determining the tax treatment of income arising from transfer of unlisted shares for which no formal market exists for trading, a need has been felt to have a consistent view in assessments pertaining to such income. It has been accordingly decided that the income arising from transfer of unlisted shares would be considered under the head 'capital gain, irrespective of period of holding, with a view to avoid disputes / litigation and to maintain uniform approach".

Therefore, keeping in view of the various submissions made by the appellant and following the ratios held in the case laws mentioned supra and also the CBDT circular as mentioned above. Therefore, the AO is directed to delete the addition made treating the sale consideration received on account of sale of shares of TOSPL which was offered by the appellant to tax as long-term capital gain, treated by the assessing officer as business income us. 28()(a) of the I. T Act. Therefore A. O. is directed to treat the same as consideration received on sale of shares under the head 'capital gain."

5.12 It is further noted that similar issue also came up in the case of appellant's husband for A.Y.2015-16, where the appellant's husband got relief from the Ld.CIT(A) who held that the offering of long-term capital gain is proper and correct and the provisions of section 28(il)(a) of the I.T. Act are not at all attracted. I find that the issue is therefore covered by the decision of CIT(A) in the appellant's own case for A.Y. 2015-16. Therefore, following the order in assessee's own case for AY 2015-16, the AO is directed to delete the addition made treating the sale consideration received on account of



sale of shares of TOSPL as business income u/s 28(i)(a) of the IT.Act 1961. The AO is directed to treat the same as consideration received on sale of shares. The ground of appeal on this ground no 1 is therefore allowed.”

3. Before us, the Ld. Counsel of the assessee submitted that the Tribunal in ITA No. 6557/M/2019 for assessment year 2015-16 in the case of the assessee has upheld the order of the Ld. CIT(A) and dismissed the appeal of the Revenue observing as under:

“6. We have heard rival submission of the parties and perused the relevant material on record. The issue before us, is whether the gain arising from sale of shares of M/s Trivector Origio India Pvt. Ltd. is taxable under the head ‘capital gain’ or under the head ‘profit and gains of the business’ u/s 28(2)(a) of the Act. The Tribunal (supra) in the case of the husband of the assessee on identical issue has held as under:

9. We have analysed the nature of transaction to determine the character of the receipts to be assessed under the head business under section 28(ii)(a) of the Act.

10. This is established position of law that any such receipt which is described in section 28(i)(a) is duly covered as capital asset as defined in sec 2(14). On such type of receipt being asset first charge on assessee will be under the head capital gain only. If assessee is not offering such receipt under the head capital gains, then only it is chargeable to tax under sec 28(i)(a). Chargeability of such type of receipt under sec. 28(i)(a) was introduced with a motive to cover the loopholes where income is neither chargeable to tax under the head capital gains nor in any other head. Whereas such type of transactions categorically covered by the finance act 1997 i.e., with effect from A Y 1998-99 through sec, 55(2)(a).

11. From the transactions and covenants of agreement observed, it clearly emanates that the business was



being carried out by M/s. TOPL and assessee was simply a shareholder and not directly into the business so it can be affirmed that the transactions of assessee with M/s. Ori M/s Origio A/S Denmark was transfer of shares and not of business itself. In this regard we relied upon the decisions of Hon'ble High Court/Apex Court.

- i. CIT Vs New India Assurance Company Ltd 122 IT 633 (Mum.)*
- ii. SIN) CIT Vs F.X. Periera and Sons (Travancore) Pvt Ltd. 184 ITR 461 (Ker.)*
- iii. CIT Vs West Coast Chemicals and Industries Ltd 46 ITR 135 (S.C)*
- iv. CIT Vs Mugni Ram Bangur and Co 57 ITR 299 (S.C)*
- v. West Coast Electric Supply Corporation Ltd Vs CIT 107 ITR 483 (Mad.)*
- vi. Syndicate Bank Ltd Vs CIT 155 ITR 681 (Kar.)*
- vii. Indian Bank Ltd Vs CIT 153 ITR 282 (Mad.)*
- viii. ACIT vs. Savita N. Mandhana & Ors., ITA No. 3900/Mum/2010*
- ix. Rohitasava Chand Vs. CIT 306 ITR 242 (Del.)*
- x. CIT Vs. Saroj Kumar Poddar 279 ITR 573 (Cal.)*
- xi. CIT Vs. Shiv Raj Gupta 372 ITR 337 (Del.)*

12. The jurisdictional ITAT in the case of similar facts, held in the case of Hami Aspi Balsara Vs ACIT 126 ITD 100, held as under "Admittedly, in the share purchase agreement no consideration was assigned towards non-compete fees and the parties had entered into the share purchase agreement after mutually settling the price of shares. This clause clearly shows that in the purchase price of shares, consideration towards Restraint Clause was embedded. Admittedly, assessee on her own was not carrying on business and it was the company in which she was shareholder was carrying on the business, ... Thus, section 28 would be attracted where the assessee was carrying on business and not where assessee only had right to carry on business in the form of capital asset."

13. In view of the above facts, pronouncement of Hon'ble High Court and jurisdictional ITAT, we are of the considered view that the assessee had rightly



declared income under the head Capital gains. No portion of considerations can be attributed for the purposes of sec. 28 hence we confirm the findings of ld. CIT(A) and dismissed the grounds of appeal raised by the Revenue.”

6.1 As identical issue of the sale of the shares of the same company is involved in the case of the assessee, therefore, respectfully following the finding of the Tribunal (supra) the grounds of appeal of the Revenue are dismissed.”

3.1 Since, the finding of the Ld. CIT(A) on the issue-in-dispute is in confirmation with the order of the Tribunal (supra) and therefore we do not find any error in the same and accordingly we uphold the same. The grounds of appeal of the Revenue are accordingly dismissed.

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

Order pronounced in the open Court on 27/04/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 27/04/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai



		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	25.04.2023		Sr. PS/PS
2.	Draft placed before author:	26.04.2023		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			