

आयकर अपीलीय अधिकरण
दिल्ली पीठ "बी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस रिफौर रहमान, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं.2850/दिल्ली/2017 (नि.व. 2010-11)

ITA No.2850/DEL/2017 (A.Y.2010-11)

Templeton Stockgrowth P. Ltd.,
(Erstwhile M/s. Campus Buildcon P. Ltd.)
D-248, Office 103 First Floor, Abhishek Business Centre,
Gali No. 10, Laxmi Nagar, Delhi 110092

PAN: AADCC-3617-P

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,
Circle 25(1), New Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Salil Kapoor, and
Shivam Yadav, Advocates

प्रतिवादीद्वारा/ Respondent by : Shri Surender Pal, CIT-DR

सुनवाई की तिथि/ Date of hearing : 19/11/2024

घोषणा की तिथि/ Date of pronouncement: : 22/11/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-33, New Delhi (hereinafter referred to as 'the CIT(A)') dated 20.02.2017, for assessment year 2010-11.

2. The assessee in appeal has raised a solitary issue i.e. treating of 'Short Term Capital Gain' on sale of shares as 'Business Income' of the assessee.

3. Shri Salil Kapoor, appearing on behalf of the assessee submits that during the period relevant to the assessment year under appeal, the assessee had sold shares

held as investment. The Short Term Capital Gain amounting to Rs.21,64,49,666/- arising on sale of shares was offered to tax. The Assessing Officer (AO) placing reliance on CBDT Instruction no. 1827 dated 31.08.1989 and 13.12.2005 treated the gain on sale of shares as 'Business Income' of the assessee as against Short Term Capital Gain claimed by the assessee and made addition of Rs.6,49,34,900/-. The Id. Counsel for the assessee submits that intention of the assessee right from the beginning was to hold said shares as investments. Accordingly, the assessee had shown shares as investments in its audited Balance Sheet. He contended that there is no bar in assessing having two separate portfolios; one comprising of stock in trade treating shares as trading asset and the second portfolio in the nature of Investments. He referred to CBDT Circular No. 4 of 2007 dated 15.06.2007, to contend that the Board has accepted that it is possible that the tax payer has two portfolios i.e. an investment portfolio comprising of securities which are treated as capital assets and a trading portfolio comprising of stock in trade treating the securities as trading assets and the assessee can have income under both heads i.e. capital gains, as well as, business income from aforesaid two portfolios. He pointed that the Assessing Officer in para 4.5 of the order has accepted that the assessee is holding shares as investments. To further substantiate his contentions, he placed reliance on various decisions including: *CIT vs. Gopal Purohit, 336 ITR 287 (Bombay)*; *CIT vs. Rohit Anand, 327 ITR 445 (Delhi)*; *CIT vs. Ess Jay Enterprises P Ltd., 173 Taxman 1 (Delhi)*; & *CIT vs. Gulmohor Finance Ltd. 170 Taxman 483 (Delhi)*.

4. Per contra, Shri Surender Pal representing the department vehemently supported findings of the AO and the CIT(A).

5. We have heard the submissions made by rival sides and have examined the order of authorities below. A perusal of assessee's Balance Sheet as on 31.03.2010

(at page 60 of the paper book) reveals that the assessee has shown shares under Capital Assets as Investment, and the income from sale of such shares were reflected in Profit & Loss Account as Short Term Capital Gain. In the past, as well investment in shares has been reflected under Fixed Assets. It is intention of the assessee which has to be seen at the time of purchase of share. As is evident from the accounting treatment, intention of the assessee was to hold the shares as investment and not a trading asset. Thus, the assessee was holding shares in Investment Portfolio. The AO while treating income from sale of shares as 'Business Income' has placed reliance on Instruction no. 1827 dated 31.08.1989 (supra). However, he has failed to take note of subsequent supplementary Circular No. 4 of 2007 (supra), wherein the Board after considering various judicial decisions has updated the previous instruction. For the sake of completeness, the relevant extract of the supplementary instructions (supra) are reproduced herein below:

"10. CBDT also wishes to emphasise that it is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

11. Assessing officers are advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). The assessing officers are further advised that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

12. These instructions shall supplement the earlier Instruction no. 1827 dated August 31, 1989."

6. The CBDT unequivocally accepted that it is possible for the assessee to have two portfolios i.e. an Investment Portfolio and a Trading Portfolio. The income from sale of shares held in investment portfolio is liable to be taxed under the head capital gains and the income from sale of shares held under trading portfolio is subject to tax as 'Business Income'. After examining the documents on record in the instant case, we have already held that the assessee was holding shares under investment portfolio. Accordingly, the assessee rightly offered gain on sale of shares as Short Term Capital Gains. The action of the AO in treating gain on sale of shares as, 'Business Income' is unwarranted and without any basis. The AO completely disregarded the intention of assessee and the accounting treatment.

7. The Hon'ble Jurisdictional High Court in the case of CIT vs. Rohit Anand (supra); CIT vs. Ess Jay Enterprises P Ltd.(supra); & CIT vs. Gulmohor Finance Ltd. (supra), in similar set of facts has upheld the order of Tribunal, wherein income from sale of shares was declared by assessee as capital gains, the Revenue recharacterised it as Business Income. On appeal the Tribunal allowed appeal of assessee, accepting gain on sale of shares as capital gains.

8. In the result, impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 22nd day of November, 2024.

Sd/-

(S RIFAUH RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 22/11/2024

NV/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI