

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1849/KOL/2024  
(Assessment Year: 2018-19)**

**Skybridge Real Estates LLP**

24, Hemant Basu Sarani,  
Mangalam-A, 5th Floor, Room  
No.507, Kolkata-700001,  
West Bengal

**(Appellant)**

Vs.

**DCIT, Circle -34,**  
Aaykar Bhavan Poorva, 110,  
Shanti Pally, E.M. Bypass,  
Kolkata-700107, West Bengal

**(Respondent)**

**PAN No. ACVFS7139R**

**Assessee by** : Shri N.S. Saini, AR  
**Revenue by** : Ms. Ruchika Sharma, DR

**Date of hearing:** 21.11.2024

**Date of pronouncement :** 02.12.2024

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 19.07.2024 for the AY 2018-19.

02. The issue raised in first ground of appeal is against the order of National Faceless Appeal Centre, Delhi [the learned CIT (A)], confirming the order of National e-Assessment Centre (the Id. AO ) wherein the conversion of stock-in-trade, of equity shares into 'stock-in-investment', in the balance sheet as of 01.04.2017, as invalid, on the ground of being non-genuine, thereby confirming the treatment by the AO of ₹4,12,62,662/- on account of short term capital gain

and Rs. 1,47,26,999/- qua Long Term Capital Gain as business income of the assessee.

03. The facts in brief are that the assessee is a limited liability partnership firm and engaged in the business of investment and trading in shares, securities and derivatives as well as the business of general commission agents. During the year the assessee filed its return of income on 30.10.2018, declaring total income of ₹2,50,19,480/-, which was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The Id. AO during the course of assessment proceedings observed that the assessee has shown purchase of stock-in-trade of ₹52,35,40,464/- for A.Y. 2017-18 and has sold these shares in A.Y. 2018-19 and thus offering said income as business income from operation of sale of shares. The assessee has also shown the income of ₹5,70,98,591/- from sale of investments in its profit and loss account. The Id. AO further noted that in the computation of income, the assessee has shown Rs. 1,47,26,999/- as long term capital gain which has been claimed as exempt u/s 10(38) of the Act, the remaining capital gain of Rs. 4,12,62,661/- was under the head short term capital gain on which tax at the rate of 20% was paid. The Id. AO noted that these equities were held as stock-in-trade after being purchased in F.Y. 2016-17 and not as capital asset. Accordingly, the Id. AO issued show cause notice to the assessee which was replied vide letter dated 05.04.2021. The Id. AO after taking into account the submission of the assessee, the Id. AO held that the income from sale of these shares which were held as stock-in-trade in the earlier financial year should have been offered as income from business, however, the assessee has either paid tax at the rate of 20% or not paid tax at all. In para 7.5, the Id. AO has extracted the balance sheet, P & L account and computation of total

income. Finally, the Id. AO treated the Long-Term Capital Gain of ₹4,12,62,661/- as business income by reducing the same from the capital gain. Similarly, the Long-Term Capital Gain of ₹1,47,27,000/- which the assessee has claimed as exempt, rejected and treated as business income of the assessee in the assessment framed u/s 143(3) read with section 144B of the Act.

04. In the appellate proceedings, the Id. CIT (A) simply affirmed the order of Id. AO.
05. After hearing the rival contentions and perusing the materials available on record, we note that the assessee is in the business of investment and trading in shares, securities and derivatives besides doing the business of general commission agent. The assessee has been showing security/shares purchase as stock-in-trade. The assessee converted the sock-in-trade as on 1.04.2017 and treated the same as investment in shares. The shares were sold in the F.Y. 2017-18, relevant to A.Y. 2018-19. The assessee purchased shares in A.Y. 2017-18 and shown in stock-in-trade. According to the assessee there is no bar or statutory embargo on converting the stock-in-trade into investment/ capital assets and amendment in that section was brought by Finance Act, 2018 by inserting Section 28(via), which provides that where stock-in-trade is converted into a capital asset it is treated as capital assets, the profit and gain from the conversion shall be taxable as business income.
06. On the other hand, the Id. AR argued before us that in absence of any bar by the Income Tax Act, the assessee can do tax planning within four corner of law and since the amendment was brought about by Finance Act, 2018 with effect from 1-4-2019 and the same is not applicable to the current assessment year and is applicable from A.Y.

2019-20. The Id. AR relied on the decision of M.P. Mehrotra (HUF) Vs. DCIT (2018) 65 ITR (Trib.) (S.N) 71 [ITAT (Delhi)], wherein the coordinate Bench has decided the similar issue in favour of the assessee. The operative part of the said decision is extracted below: -

"15. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Id. CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has converted its stock-in-trade of shares and securities of certain companies to investment as on 01.04.2004 at the same value as on 31.03.2004. We find the Assessing Officer while holding that the law does not prohibit the assessee from converting its stock-in-trade to investment, has however, rejected the explanation given by the assessee on the ground that the assessee is still dealing in shares and securities which is evidenced by the frequency of transactions. He, therefore, made addition of Rs.85,59,900/- to the income of the assessee being business profit on conversion of stock-in-trade to investment which has been upheld by the Id. CIT(A). It is the submission of the Id. counsel for the assessee that such conversion is bona-fide since the assessee has held such shares and securities in the investment account and no share has been held under the head stock-in-trade. It is also his argument that it is the right of the assessee to convert the shares from stock-in-trade to investment as long as the conduct of the assessee is bona-fide and he is following the method consistently. We find some force in the arguments advanced by the Id. counsel for the assessee. As mentioned earlier, the assessee in its note to accounts has given reason for conversion of stock-in-trade to investment which has already been reproduced in the preceding paragraph. We find the Assessing Officer accepts that such conversion is legal but doubting about the bonafideness of the assessee treating such conversion as colourable device to avoid payment of tax. We find the Hon'ble Delhi High Court in the case of Express Securities P. Ltd. (supra) while deciding an identical issue has decided the issue in favour of the assessee by observing as under :-

"2. The assessee is a company. In the return for the year in question, it had declared long-term capital gain of Rs.3,34,65,931/- and the said gain was claimed as exempt under Section 10(38) of the Income Tax Act, 1961 (Act, for short). The respondent-assessee had claimed before the Assessing Officer that they were maintaining two sets of portfolio, i.e., investment and trading portfolio and the shares, which were sold and subject matter of long-term capital gains, were held in the investment portfolio. This factual position was not disputed.

3. The Assessing Officer has recorded that as per the business activities undertaken by the assessee, they were dealing and trading in shares and financial securities in Bombay Stock Exchange, Delhi Stock Exchange and Calcutta Stock Exchange. The respondent-assessee was a registered broker with the said exchanges. The Assessing Officer held that the business of the assessee was not to invest in shares but to deal with the shares as a stock broker and trader. He observed that conversion of stock in trade into

investment was done with the intention not to pay taxes as Section 10(38) was introduced by Finance Act, 2004 with effect from 1st April, 2005. Accordingly, he held that the entire amount was taxable as a "trading receipt" and not under the head "capital gains".

4. The assessment order does not mention the date on which the shares in question were purchased. We also note that the assessment order records that the assessee had converted and transferred the shares in question under the head "investment" on 1st April, 2004. This factual position was not disputed or questioned. The shares in question were sold during the period ending 31st March, 2006, nearly 2 years after the date of conversion of stock in trade into investment with a specific declaration. Mere fact that Section 10(38) was introduced in the statute by Finance Act 2004 with effect from 1st April, 2005, does not mean that the said conversion was improper or illegal. After the said Section was inserted, the assessee on noticing the tax benefit, was entitled to convert and change his holding from stock in trade into investment. Such conversion cannot be dealt with and rejected on the ground that Section 10(38) of the Act was introduced with effect from the said date. Conversion may be rejected for other reasons and grounds like the intention was not to convert and the assessee still continued to treat and regard the shares as stock in trade and not investment. But there is hardly any discussion in the assessment order in this regard. Justification and reasons have not been elucidated and brought on record to uphold the contention of the Revenue that the shares were continued to be held as stock in trade and not as an investment.

5. The Commissioner (Appeals) noticed that the shares in question as held on 31st March, 2004 and their book value was as under:-

Scrip name	Quantity	Book value as on 31.03.2004
Global Tele	3,35,000	2,09,14,050
Himachal Futuristic	6,15,000	75,27,600
NIIT	20,000	33,97,200

6. The Commissioner (Appeals) has observed that in the balance sheet as on 31st March, 2005 the shares were shown under the head "inventories" and in the subsequent balance sheet as on 31st March, 2006 shares were again shown under the head "investment at book/fair value on 1st April, 2004". Thus, the assessee converted the aforesaid stock in trade of Rs.3,18,38,850/- to the head "investment at book/fair value on 1st April, 2004" and the said disclosure was made in the balance sheets as on 31st March, 2005 and 31st March, 2006. In the first year, the Assessing Officer did not disturb the aforesaid conversion and accepted the same. The Commissioner (Appeals) noticed that for the Assessment Year 2005-06 assessment was concluded under Section 143(3) vide order dated 27th November, 2007 but the Assessing Officer did not object to the said conversion. These shares were subsequently sold as detailed in paragraph 2.9 of the order of the Commissioner (Appeals) in August, 2005, September, 2005 and substantial portion was sold in March, 2006 and long-

term capital gains was declared. He observed that statute did not reject or frown upon conversion of stock in trade into investment and the said conversion was permissible. Commissioner (Appeals) referred to the Circular No. 4/2007 dated 15th June, 2007 issued by the Central Board of Direct Taxes, which stipulates that two portfolios one for stock in trade and one in respect of investments could be maintained by the same assessee. He took into account the period of holding by the assessee and the fact that the conversion into investment was made on 1st April, 2004 and outlay was disclosed in the audited accounts for the Assessment Year 2005-06. The sales made, as noticed above, were after considerable delay of approximately two years thereafter.

7. In view of the aforesaid factual findings recorded by the Commissioner (Appeals) and the tribunal, we do not see any reason to interfere and issue notice on the main appeal. Accordingly, we are not inclined to issue notice on the application for the condonation of delay and the same and consequentially the appeal are dismissed."

1.6 We find the Hon'ble Gujarat High Court in the case of Aditya Medisales Ltd. (supra) while deciding an identical issue has observed as under :-

"12. It can thus be seen that the situation in the present case finds a direct answer in the judgement of the Constitution Bench in case of Kikabhai Premchand (supra) in which, as noted, the assessee had settled a part of his shares and silvers bars held as stock into a trust of which he was prime beneficiary and was also in control of the trust. It was held that in the process, the assessee's business made no profit or gain nor did it sustain a loss. The appellant did not derive any income. He may have stored up a future advantage for himself but since transactions did not derive an immediate pecuniary gain, the State cannot tax it since under the Income Tax Act, the State had no power to tax a potential future advantage. Facts of the present case are quite similar. The Assessing Officer had referred to in detail the reasons recorded as sequence of events under which the assessee converted its shares held as stock-intrade to investment on 1.4.2004 which was done at the cost price and not market value. The Assessing Officer seems to be having two objections. First, he refers to the conversion of stock at cost price and not market price and second, he refers to profit to the business which would be the difference between the cost of acquisition of the shares and their market value on the date of transfer which should be taxed. In view of the judgement in case of Kikabhai Premchand (supra), mere transfer of shares by the company from its stock-in-trade to investment account would result in no profit or gain to the business. The question of correct valuation at which the same should have been transferred therefore, pales into insignificance when we are concerned with a single question namely, whether on the premise suggested by the Assessing Officer it can be stated that the income of the petitioner chargeable to tax had escaped assessment."

17. The two decisions relied on by the Id. DR are not applicable to the facts of the present case. In the case of M/s Reema Construction Pvt. Ltd. (supra), the land was situated on highway and was purchased only for development or for industrial activities and no prudent person would purchase such land for carrying out agricultural activities.

*It was accordingly held that the Assessing Officer has rightly treated the said land as non-agricultural land. Therefore, the said decision is not applicable to the facts of the present case. Similarly, in the case of Swan River Financial Ltd. (supra) is prior to the decision of the Hon'ble Delhi High Court in the case of Express Securities Pvt. Ltd. (supra). Since the decision of the Hon'ble Delhi High Court would prevail over the order of the Tribunal which was decided prior to the decision of the Hon'ble Delhi High Court, therefore, the decision relied on by the Id. DR is not applicable to the facts of the present case. In this view of the matter and following the decisions relied on by Id. counsel for the assessee cited (supra), we hold that the Id. CIT(A) was not justified in upholding the action of the Assessing Officer in making the addition of Rs.85,59,900/-. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to delete the addition.*

18. *In the result, the appeal filed by the assessee is allowed. "*

07. Considering the facts of the assessee in the light of above decision, we hold that there was no legal bar on the assessee assessee to convert the stock in trade(shares) into investments in the instant assessment year and accordingly the conversion can not be treated as non genuine. Therefore, respectfully following the decision , we set aside the order of Id. CIT (A) and direct the Id. AO to treat the conversion of stock-in-trade into investment as correct. We also direct the AO to treat the Rs. 4,12,62,662/- as short-term capital gain and Rs. 1,47,26,999/- as long term capital gain instead of business income. The appeal of the assessee is allowed.

08. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 02.12.2024.

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 02.12.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata