

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri K. Narasimha Chary, JM]

I.T.A No. 2221/Kol/2013
Assessment Year: 2009-10

Assistant Commissioner of Income-tax, Vs. Shree Umesh Hiranand Chablani
Circle-30, Kolkata. (PAN: ACDPC5457G)
(Appellant) (Respondent)

Date of hearing: 08.08.2016
Date of pronouncement: 24.08.2016

For the Appellant: Shri Divakar Chakraborty, JCIT, Sr. DR
For the Respondent: Shri A. K. Tulsian, FCA & Shri Amit Kumar, ACA

ORDER

Per Shri K. Narasimha Chary, JM:

This appeal by revenue is arising out of order of CIT(A)-XIV, Kolkata vide appeal No. 787/CIT(A)-XIV/Kol/11-12 dated 15.05.2013. Assessment was framed by JCIT, Range-30, Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2009-10 vide his order dated 20.12.2011.

2. Brief facts are that the assessee filed his return of income on 27.7.2009 for the Assessment Year 2009-10 declaring an income of Rs. 30,30,675/- and he revised the same on 28.7.2009 for the same income. In the return, the assessee declared loss under Short Term Capital Gains to the tune of Rs.87,96,078/- in respect of his sale of shares and units of mutual funds, and Long Term Capital Gains of Rs.20,78,301/-. According to the Assessee, Security Transaction Tax was paid in respect of both Short Term Capital Gains and Long Term Capital Gains. He claimed exemption under section 10(38) of the Act in respect of Long Term Capital Gains. Assessee also income from the house property in Mumbai to the tune of Rs. 14,77,535/- under two agreements namely, agreement for rent for flat and other is for Hire charges for furniture and fixtures.

3. AO treated the loss under Short Term Capital Gains and the Long Term Capital Gains as the loss and gain out of business activity. Further, the AO treated the income emanating from the agreement alleged to have been made for the Hire charges for furniture

and fixtures as income from other sources. Assessee in his return claimed credit for prepaid taxes of Rs.9,26,889/- comprising of TDS of Rs.3,78,889/-, advance tax of Rs.5,03,000/- and self assessment tax of Rs.45,000/-. However, while computing the Tax, the AO allowed credit for Rs.6,12,550/- comprising of advance tax of Rs.64,550/- and TDS of Rs.5,48,000/-. While doing so, the AO computed the assessee's loss at Rs.45,38,381/- and determined the tax and refundable to the assessee at Rs.6,88,105/-.

4. Aggrieved by the same, assessee carried the matter in appeal to the CIT(A) and the learned CIT(A) vide impugned order directed the AO to treat the income and loss resulting from transactions in Sales/Redemption of Shares/MF Units through PMS under the head "Capital Gains" – short term or long term, as the case may be, and to treat the income in respect of the fixtures and furniture as the income from house property.

5. Challenging the impugned order, the revenue came in appeal before us on the following ground nos. 1 and 2:

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in law as well as on facts in not considering share/mutual fund transaction through portfolio management services (PMS) as business activity.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in law as well as on facts in ignoring the fact that hire charge of furniture & fixture is income from Other Sources and deduction u/s. 24(a) of the Act was not allowable on this receipt. "

6. We have heard rival submissions and carefully gone through the material papers on record. It is the argument of the learned AR that for and up to the AY 2007-08 in all the assessments the AO had been consistently treating the income resulting from Sale of Shares/MF units both directly as well as through PMS as the income from Capital Gains - Long Term Capital Gain Or Short Term Capital Gains, as the case may be, but it is only from the AY 2008-09 the AO started treating it as the income from business activity. Learned CIT(A) placed reliance on the decisions of a coordinate Bench of Kolkata in ACIT vs Raghupati Singhania & Ors. In ITA Nos. 1761 to 1763/Kol/2010, ACIT vs Vanita Singhania in ITA No. 400/Kol/2010 and DCIT vs Bharat Hari Singhania in ITA No. 1760/Kol/2010, wherein it was held that the surplus arising from transactions in Shares through Portfolio Managers would be assessable either as Short Term Capital Gains or Long Term Capital Gains.

7. It is submitted by the learned AR that in the assessee's own case for the AY 2008-09, in ITA 561//Kol/2012 a coordinate Bench of this Tribunal held that this sort of transactions give rise to only capital gains and cannot be treated as income from business. A copy of the order is produced before us and at para 6.2 it was held as follows:

"6.2. Now we find that admittedly the AO in this case has taxed the capital gain accruing to the assessee under the Portfolio management Scheme as business income by holding that the assessee was trading in shares. The same is not at all permissible in view of the nature of assessee's activities as examined by the Ld. CIT(A). Furthermore, the ratio in this regard as emanating from the decision of the Hon'ble Delhi High Court is that when substantial amount of shares which were dealt with under the Portfolio management scheme were held for a period longer than six months the same was intended for investment. Hence the gain arising out of transactions under P.M.S was capital gain. Hence, the Ld. CIT(A) was correct in examining the nature of assessee's transaction and holding that these transactions gave rise to only capital gain and cannot be treated as income from business. Accordingly respectfully following the precedent as above we hold that there is no infirmity in the order of the Ld. CIT(A). Accordingly we uphold the same."

Respectfully following the precedent as above we hold that there is no infirmity in the order of the Ld CIT(A) and hence, the same is hereby upheld. Accordingly, Ground No.1 of the appeal of revenue is dismissed.

8. In respect of ground No 2, on this aspect the learned CIT(A) held that the Hire charges for furniture and fittings being in fact the Hire charges for the premises, such Hire charges of furniture should be assessed under the head "income from House Property" in stead of income from other sources. As could be seen from the circumstances, the agreement for Hire charges for furniture and fixtures does not exist independently, because on the termination of agreement for rent for flat, it will also go. Agreement for Hire charges for furniture and fixtures only enhances the utility of the agreement for rent for flat and wholly depends on the existence of such other agreement. It forms integral part thereof. On this aspect also, it is submitted by the learned AR that in assessee's own case for the AY 2008-09, in ITA 561//Kol/2012 a coordinate Bench of this Tribunal held that the Hire charges for Furniture are in fact the Hire Charges for the premises, and assessable under the head "Income from House Property". A copy of the order is produced before us and at para 8 it was held as follows:

"8. We find that the Ld. CIT(A) has given a finding that from long ago the Hiring of Furniture has been consistently considered under the head "Income from house property" by the Revenue in all earlier assessments not only in the case of the appellant but also in the case of the joint owner, viz. the appellant's mother. The Ld. CIT(A) was of the view that both the agreements the one for rent of flat and the other for the hire of furniture and fixture are interdependent. This fact is evident from the various clauses of both the agreements. The TDS certificates also reveal that there was only one consolidated hiring of the flat with all furniture

and fittings lying therein and that the licensee has also been paying the hiring charges by one cheque very month. In light of these facts, the Ld. CIT(A) was of the considered view that the flat and the furniture were rented in a composite manner by the appellant. Therefore, the Ld. CIT(A) held that the Hire charges for Furniture being in fact the Hire Charges for the premises, such Hiring charges of Furniture should be assessed under the head "Income from House Property" instead of "Income from other sources" as done by the AO."

Since there is no change of facts and the decision of the coordinate bench of this Tribunal is directly applicable, while respectfully following the same, we hold that there is no infirmity in the order of the Id CIT(A) and hence, the same is hereby upheld. Accordingly, Ground No.2 is also dismissed.

9. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 24.08.2016

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(K. Narasimha Chary)
Judicial Member

Dated :24th August, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – ACIT, Circle-30, Kolkata.
2. Respondent –Shree Umesh Hiranand Chablani, C/o Pranab Chatterjee,
Flat 3A, 10/1, Rainy Park, Kolkata-19.,
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.