

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.Nos.2247 to 2250/Mds/2013

(निर्धारणवर्ष / Assessment Years: 2003-04 to 2005-06 & 2007-08)

The Asst. Commissioner of Income Tax, Corporate Ward 4(2), Chennai -34.	Vs	Smt. Nina B Kothari Legal Representative of Late Shri Bhadrashyam Harshad Kothari, No.18, Mahatma Gandhi Road, Nungambakkam, Chennai – 34. PAN: AGJPK7393K
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri A.V. Sreekanth, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Shri R. Vijayaraghavan, Advocate

सुनवाईकीतारीख/Date of hearing	:	05.04.2017
घोषणाकीतारीख /Date of Pronouncement	:	17.04.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the Revenue are directed against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-II, Chennai all dated 19.08.2013 in ITA Nos.1659 to 1661/2013-14 for the assessment years 2003-04, 2004-05 and 2007-08 passed U/s.250(6) r.w.s 143(3) & 147 of the Act and ITA No.1662/2013-14 for the assessment year 2005-06 passed U/s.250(6) r.w.s.143(3) of the Act.

2. The Revenue has raised several grounds in its appeals, however the crux of the issue in all the appeals is that the Ld. CIT(A) has erred by deciding that loss on sale of shares to the extent of, Rs.60.11 lakhs sic Rs.27,52,796/- for the assessment year 2003-04, Rs.1.42 crores sic Rs.1,36,83,951/- for the assessment year 2004-05, Rs.21,42,154/- for the assessment year 2005-06 and Rs.1.93 crores sic Rs.71,55,486/- for the assessment year 2007-08, are to be treated as “business loss” as against “capital loss” held by the Ld.AO.

3. The brief facts of the case are that the assessee is an individual engaged in the business of trading in shares and units of mutual funds. During the relevant assessment years the assessee had claimed loss due to depletion in the value of closing stock of shares and units in mutual funds amounting to Rs.27,52,796/- for the AY 2003-04, Rs.1,36,83,951/- for the AY 2004-05, Rs.21,42,154/- for the AY 2005-06 and Rs.71,55,486/- for the AY 2007-08 in his return of income. The assessee had explained before the Ld.A.O that he is carrying on the business of trading in shares and units of mutual funds as one of his business activity. All the shares and units of mutual funds are

purchased and sold as per the contract note backed by actual delivery. It was therefore explained that trading activity of the assessee of shares and units of mutual funds will not fall within the ambit of Section 43(5) of the Act viz., “speculative transaction”. The assessee further explained before the Ld.A.O that since he was trading in shares and units of mutual funds as his business activity, profit or loss arising out of the same cannot be treated as capital gain / loss. However, the Ld.AO rejected the contentions of the assessee by observing as under:-

1. *“The assessee has two proprietary concerns viz., Kothari & Kothari for brokerage income & Transworld India Enterprises for professional income. The profit & Loss account and Balance Sheet of both these concerns does not show any inventory of shares and closing stock value.*
2. *If the intention of the assessee is to keep the shares as stock in trade, the assessee should have filed audit report u/s 44AB of these transactions. The assessee claims that the treatment of shares as stock in trade has become a finality in 1989 itself (AY 81-82 to 84-85) but the assessee has not drawn any P&L A/c and Balance Sheet or filed 44AB report from 1989.*
3. *The assessee has to maintain the distinction between shares held as stock and those held as investments in its records;”*

Thereafter the Ld.AO rejected the audit report filed U/s. 44AB of the Act, because it was belated and disallowed the claim of loss on account of depletion in the value of his closing stock consisting of shares and units of mutual funds .

4. On appeal the Ld. CIT after deliberating issue in detail held the matter in favour of the assessee for all the above assessment years because of the following reasons:-

- i. The assessee had purchased and sold shares during the financial year 2002-03 to 2006-07. Hence it was purely trading activity.
- ii. The assessee in his computation statement has shown income from stock-in-trade under the head "business income".
- iii. The affairs of the other two proprietary concerns of the assessee viz., M/s. Kothari & Kothari and M/s. Transworld India Enterprises are independent from each other as well as the other trading activity of the assessee in shares and units of mutual funds. Therefore no adverse inference can be drawn from the balance sheet/statement of affairs of the other proprietary concerns and other business activities of the assessee.

- iv. The statement of affairs of the assessee clearly indicated that the assessee was holding stock-in-trade with respect to shares and units of mutual funds.
- v. Non-filing of audit report U/s.44AB of the Act along with the return of income cannot alter the characteristics of the transactions made by the assessee.
- vi. Once the shares and units of mutual funds are treated as stock-in-trade by the assessee the same cannot be treated otherwise by the Revenue.
- vii. The assessee in all the above assessment years had enclosed his P&L account along with the return of income in some comprehensible manner.
- viii. The assessee had furnished the details of shares and units of mutual funds purchased/sold and held by him as closing stock, transaction wise.
- ix. The assessee has been purchasing and selling shares and units of mutual funds in different counters (scripts) in large volumes at regular intervals, which show that these transactions are trading in nature and not investments.

- x. All the purchases and sales of shares are made on delivery basis and hence these transactions cannot be treated as speculative in nature.

5. Before us the Ld.DR argued in support of the order of the Ld.AO while as the Ld.AR relied on the order of the Ld.CIT(A) and argued in support of the same with a prayer to sustain his order.

6. We have heard the rival submissions and carefully perused the materials on record. From the order of the Ld.CIT(A) it is crystal clear that the loss on account of depletion in the value of the closing stock of shares and units of mutual funds held by the assessee has to be treated as business loss because the entire transactions with respect to purchase/sale of shares and units of mutual funds is nothing but trading in nature and not investments and these findings of the Ld.CIT(A) could not be successfully controvert by the Ld.DR. Further the Ld.CIT(A) has made a categorical finding that the purchase and sale of shares was only on actual delivery basis which could also not be controverted by the Ld.D.R. Hence those transactions cannot be treated as

speculative in nature as per Section 43(5) of the Act. Therefore we do not find it necessary to interfere with the order of the Ld.CIT(A) and accordingly we do not find any merit in the appeals of the Revenue.

7. In the result all the appeals of the Revenue are dismissed.

Order pronounced in the court on the 17th April, 2017.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 17th April, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |