

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH SMC NEW DELHI**

**BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

**ITA No.5712/Del/2016  
Assessment Years 2012-13**

<b>M/s. Blossom Investment Private Ltd., 54-Ring Road, Lajpat Nagar-III New Delhi PAN: AAACB 0197L</b>	Vs.	<b>Income Tax Officer, Ward-5(1), New Delhi.</b>
(Appellant)		(Respondent)

Assessee(s) by :	Shri D.C. Garg, C.A.
Revenue by :	Ms. Bedobani Chaudhuri, D.R.

सुनवाई की तारीख/Date of Hearing : 20/04/2017

घोषणा की तारीख /Date of Pronouncement: 25/04/2017

**ORDER**

This appeal of the assessee arises from the order of learned CIT(A)-35, New Delhi, vide order dated 1.09.2016 for the assessment year 2012-13.

2. The assessee has raised the following grounds of appeal.

“1. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the order of the Income Tax Officer by treating the Long Term Capital Gains of the appellant as Profit and Gains of Business or Profession by wrongly applying the provisions of the Income Tax Act, 1961.

2. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the order of the Income Tax Officer by ignoring the submission and the facts of the case, and also ignoring the binding circular no.6/2016 issued by CBDT.

3. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the order of the Income Tax Officer by ignoring the submission and the facts of the case, and also ignoring the clarification issued on 2<sup>nd</sup> May, 2016 related to taxability of income/ loss arising from transfer of unlisted shares.

4. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the order of Income Tax Officer in denying the benefit of indexation under the provisions of Section 48 for the computation of Long Term Capital gains to the appellant.

5. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the order of the Income Tax Officer in applying the normal rate of tax @30% on the Income from Long Term Capital Gains being eligible to be taxed at special rate of 20% under Section 112(1) of the Act.

6. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the order of the Income Tax Officer in applying the normal rate of tax @30% on the Income from Long Term Capital Gains being eligible to be taxed at special rate of 10% under proviso to Section 112(1) of the Act.”

3. The brief facts of the case are that as per Assessing Officer’s order reproduced hereinbelow:

*The assessee company stated to be engaged in the business relating to investment 7' and finance activities during the year under consideration and derived income under the head income from business and profession. That apart from that the assessee company also stated to holding investment portfolio and income from these was being declared under the head capital gain and also has Income from other sources*

3. During the course of assessment proceedings, on perusal of P & L account (In Schedule 2.9), it is noticed that the assessee has shown the following receipts:

<i>Profit on sale of Investments</i>	<i>Rs. 45,52,492/-</i>
<i>Interest on REC Bonds</i>	<i>Rs. 3,12,500/-</i>
<i>Interest from PFC Ltd.</i>	<i>Rs. 44,574/-</i>
<i>Dividend</i>	<i>Rs. 3,20,656/-</i>
	<i><u>Rs.52,30,223/-</u></i>

*In the P& L account there is no purchase or sale of any share. However in the computation of income the assessee has treated the profit on sale of investments of Rs.45,52,492/- as long term capital gain of Rs.35,30,230/- and short term capital loss of Rs.18544/- and shown loss from alleged business at Rs.1,33,706/-. Against the alleged business loss of Rs.1,33,706/- the assessee has claimed expenses of Rs.2,18,517/-. During the year, the audited figures of balance sheet are as follows:*

	<u>31.3.2012</u>	<u>31.3.2011</u>
<i>Closing stock</i>	<i>1,50,000</i>	<i>1,50,000</i>
<i>Current Liabilities</i>	<i>5,95,904</i>	<i>5,95,904</i>

*The same figures are appearing in the balance-sheet for assessment year 2009-10 and 2010-11. These facts clearly reflect that the assessee for the past many years had not shown any income from the trading of shares. During the year also there is no business activity, other than sale and purchase of investments. It is evident that sale and purchase of investment is the business of the assessee and profit arising out of such sale of investment is the business.”*

4. Learned CIT(A) confirmed the action of the Assessing Officer by holding as under:

*“4.1 The Assessing Officer was asked to confirm the statutory validity of the appeal filed u/s. 249(2)/249(4) of the IT Act, vide notice dated 25.06.2015. He was also given an opportunity of hearing vide the said notice. However, no reply has been received by the Assessing Officer. Therefore, it is presumed that the Assessing Officer confirms the statutory validity of the appeal filed and does not wish to remain present in the appellate proceedings.*

*4.2 The only issue involved is rejection of the appellant’s claim of long term capital and short term capital gains in respect of sale of securities etc. The Assessing Officer has taxed the same as business income the issue is covered against the appellant by the order of CIT(A) for A.Ys. 2010-11 and 2011-12 for reference the records of proceedings dated 01.09.2016 are reproduced hereunder:-*

*“Shree Deepchand Garg, C.A. Attended. Issue is covered against the appellant in A.Y. 2010-11 and A.Y.2011-12 by the order of CIT(A). Appeal before the ITAT is stated to be pending. Appeal heard”*

5. I have heard the rival contentions and perused the facts of the case. It was argued by the learned counsel for the assessee that during the assessment year 2010-11 and 2012-13, the investments have been declared in the balance sheets of M/s. Morgan Stanley India Capital and that of ICICI Prudential which are listed securities and unlisted securities. He pointed out the circulars no.6/16 dated 29.02.2016 and letter no.225/12/2016 dated 2.5.2016 where it has been mentioned that if the listed shares are held for more than twelve months, the same shall not be put to dispute by the Assessing Officer and shall be taxed as capital gain. The relevant part is reproduced hereinbelow.

*“In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contract stand in this regard in subsequent years.*

*Regarding characterisation of income from transactions in listed shares and securities, Central Board Of Direct Taxes (‘CBDT) had issued a clarificatory Circular no. 6/2016 dated 29<sup>th</sup> February, 2016: wherein with a view to reduce litigation and maintain consistency in approach in assessments, it was instructed that income arising from*

*transfer of listed shares and securities which are held for more than twelve months would be taxed under the head 'Capital Gain' unless the tax-payer itself treats these as its stock-in-trade and transfer thereof as its business income. It was further stated that in other situations, the issue was to be decided on the basis of existing Circulars issued by the CBDT on this subject*

*2. Similarly, 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, accordingly, been decided that the income arising from transfer of unlisted shares would be considered under head 'Capital Gain', irrespective of period of hold in with a view to avoid disputes/litigation and to maintain uniform approach."*

6. Though the assessee has not carried out any business activities as per the main object but he has dealt with the listed and the unlisted shares which are held for more than twelve months and which have been sold during the year though the assessee has not carried out the business during the preceding years and in the impugned year and has dealt with in the investments only but for the circular of the CBDT he gets the benefit of being assessed under the head 'capital gains'. Therefore, in view of the circulars referred to hereinabove, the assessee has essentially to be assessed under the head 'capital gains' and not in the head 'business or profession'. Accordingly, all the grounds of the assessee are allowed.

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

Order pronounced in the open court on this day 25<sup>th</sup> April, 2017

**Sd/-**

**(B.P. JAIN)**

**ACCOUNTANT MEMBER**

Dated: 25/04/2017

*Prabhat Kumar Kesarwani, Sr.P.S.*

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

**Asstt. Registrar, ITAT, New Delhi**