

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.400/Hyd/2016		
Assessment Year: 2006-07		
Karpaga Vinayagar Enterprises Pvt Ltd, Hyderabad. PAN: AAACK 8994 N	Vs.	Income Tax Officer, Company Ward-11(1), Chennai.
(Appellant)		(Respondent)
Assessee by:	Sri P. Murali Mohana Rao	
Revenue by:	Sri Solgy Jose T. Kottaram, DR	
Date of hearing:	05/02/2020	
Date of pronouncement:	08/07/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-8, Hyderabad in appeal No. 50/2008-09 dated 30/11/2015 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2006-07.

2. The assessee has raised several grounds in its appeal however, the crux of the issue is that the Ld. CIT (A) has erred in upholding the order of the Ld. AO who had treated the income arising from sale of equity shares under the head "Income from business" as against the claim of the assessee of "Income from short term capital gain".

3. The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of trading in shares as well as investment in shares filed its return of income for the relevant AY on 30/11/2006 admitting income of Rs. 12,84,952/-. Subsequently, the case was taken up for scrutiny and the assessment was completed U/s. 143(3) of the Act on 05/12/2008.

4. During the course of scrutiny assessment proceedings it was observed by the Ld. AO that the assessee had disclosed income of 12,84,952/- under the head "STCG". However, the Ld. AO opined that since the nature of business of the assessee is trading in shares the same has to be treated as income from business and not under the head 'Income from shorter term capital gain'. Accordingly, the Ld. AO computed the net income of the assessee under the head "Income from business" at Rs. 12,49,567/- (sic) Rs. 12,85,567/- after disallowing proportionate expenses of Rs.615/- towards administration expenses, interest, and bank charges. On appeal, the Ld. CIT (A) deleted the addition made for Rs. 615/- as it was an ad-hoc disallowance made by the AO on an improper basis. However, the Ld.CIT (A) upheld the view of the Ld. AO that the income earned by the assessee towards sale of shares has to be taxed under the head "Income from business" because the nature of activity of the assessee was trading in shares. The Ld. CIT

(A) arrived at such a conclusion based on the audit report of the Chartered Accountant filed in Form-3CA and 3CB as per Rule 6G of the IT Rules, 1963.

5. The Ld. AR argued before us by stating that the assessee had treated the shares purchased as its “investment” and not “stock-in-trade”. The Ld. AR further submitted that in the audited financial statement the entire equity shares purchased by the assessee was disclosed as “investments” and not as “stock-in-trade”. To evidence the same the Ld. AR referred to the paper book page No.3 to 8 filed by the assessee. It was therefore pleaded that the gain earned by the assessee from the sale of its investment in equity shares may be treated as income from “short term capital gain” and not under the head ‘income from business’. The Ld. DR on the hand relied on the orders of the Ld. Revenue Authorities and prayed for confirming the same.

6. I have heard the rival submissions and carefully perused the materials on record. On perusing the audited statement of account of the assessee enclosed in paper book page No. 3 to 6 it is quite evident that the assessee has classified the equity shares purchased by it as ‘investments’ and not as ‘stock-in-trade’ as on 31/3/2006 and as on 31/3/2005 in the Balance Sheet. Therefore, the assessee is right in its rem to treat the gain resulting from the sale of its investment in equity

shares under the head “income from short term capital gains” as per the provisions of the Act. Error committed by the Chartered Accountant in his audit report will not alter the intention of the assessee for holding the equity shares purchased by it as “investment” which is evident from the statement of accounts/Balance Sheet of the assessee. It is pertinent to mention that the Chartered Accountant of the assessee as well as the Ld. Revenue Authorities may have been confused on the issue because the assessee though have classified the purchase of equity shares as investment in its Balance Sheet, the same is disclosed in the P & L Account as trading activity. Considering the facts and circumstances of the case, I hereby direct the Ld. AO to treat the income earned by the assessee during the relevant assessment year as “Short Term Capital Gain” or “Long Term Capital Gain” as the case may be. It is ordered accordingly.

7. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

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

Pronounced in the open Court on 08th July, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 08th July, 2020.

OKK

Copy to:-

- 1) Karpaga Vinayagar Enterprises Pvt Ltd C/o. P. Murali & Co., Chartered Accountants, No.361, 13th Main, RMV Extn, Bangalore-560080.
- 2) Income Tax Officer, Company Ward-II(1), Chennai.
- 3) The CIT(A)-8, Hyderabad.
- 4) The Pr. CIT, Chennai-4, Chennai.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File