

Investment of borrowed funds in shares would not show that assessee was carrying on business of investment in shares

Summary – The High Court of Karnataka in a recent case of Kapur Investments (P.) Ltd., (the Assessee) held that Excess borrowed funds lying with assessee can always be invested in shares for earning higher returns or through professionally managed Portfolio Management Scheme; it would not mean that assessee was carrying on business of investment in shares

Facts

- The assessee-company was engaged in the business of finance and films. For the relevant year, the assessee took a loan and had invested borrowed funds in shares through the Portfolio Management Scheme of 'M'.
- The Assessing Officer opined that assessee had derived huge profits because of regular transactions and, therefore, termed same as business income of the assessee.
- The Commissioner (Appeals) as well as Tribunal held that profit on sale of shares was assessable as capital gain and, therefore, allowed assessee's claim.
- On revenue appeal:

Held

- In the court's opinion, investment through Portfolio Management Service, which may deal with the shares of the assessee so as to derive maximum profits cannot be termed as business of the assessee but would only be a case of a more careful and prudent mode of investment, which has been done by the assessee. Funds lying with the assessee can always be invested (for earning higher returns) in the shares either directly or through professionally managed Portfolio Management Scheme and by doing so, it would not mean that the assessee was carrying on the business of investment in shares. Profits from such investment, either directly or through professionally managed firm, would still remain as profits to be taxed as capital gains as the same will not change the nature of investment, which was in shares, and the law permits it to be taxed as capital gains and not as business income.
- The assessee having taken loan and having invested borrowed funds in purchase of shares, the Income Tax Act does not prohibit the assessee from making investments in capital assets after using borrowed funds. The Tribunal has also considered this aspect of the matter and decided in favour of the assessee and the court see no reason to differ with such opinion of the Tribunal.