

Income on sale of shares to be treated as business income as assessee had regularly dealing in its sale & purchase

Summary – The High Court of Delhi in a recent case of Rakesh Kumar Gupta, (the Assessee) held that where assessee was selling shares very frequently, volume and magnitude was very high and he earned only a meagre amount of dividend, income arising from sales of shares was assessable as business income

Facts

- The assessee had purchased and sold the shares of Rs. 22.03 crores and odd and Rs. 24.12 crores and odd respectively. Some of the shares of bank were purchased in the previous year, out of which some were sold and balance had been shown as on 31-3-2009. The assessee filed its return of income and claimed capital gains from sale of shares.
- The Assessing Officer characterised the income reported as business income towards capital gains and capital loss. In doing so, the Assessing Officer took note of the detailed transactions that the assessee had entered into including the volume of shares traded, the duration held, the dividends earned etc.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On further appeal, the Tribunal held that the assessee had made purchase of shares 57 times and sale of shares 59 times. There were several instances when the assessee had purchased the shares and sold them either the same day or after a few days. In most of the cases, the assessee had done intraday transactions. On perusal of the computation filed by the assessee and the capital account, the assessee had not received any dividend during the year. The assessee had received only dividend of Rs. 350 in financial year 31-3-2009. In view of the characteristics of share transactions undertaken by the assessee, there was no any justification to discard the findings reached by the lower authorities.
- On appeal to the High Court :

Held

- It is apparent from the factual narrative that the revenue authorities - including the Commissioner (Appeals) and the Tribunal carried out a detailed analysis of the transactions in question including the volume of holding, duration of holding and the dividend earned and other essential details. In this background the assessee's assertion that the previous year's assessment-which had accepted the reporting of the transaction which he claims to be identical, is unpersuasive. The previous year's assessment order (for assessment year 2008-09) in fact did not lead any discussion on this aspect and appear to have merely accepted the assessee's contention. Those cannot by any stretch of

imagination be conclusive. At any rate in such cases, one cannot apply the principle of res judicata or estoppel.

- For these reasons, the Court is of the opinion that no substantial question of law arises. What is urged related to pure appreciation of facts. The appeal is therefore dismissed. All the pending applications also stand disposed of.