Sale proceeds taxable as business income if assessee failed to prove that shares were kept as investments

Summary – The Delhi ITAT in a recent case of Mahesh Chandra Agarwal., (the Assessee) held that where assessee filed his return wherein income from sale of shares was shown as short term capital gain, in view of fact that assessee did not furnish any evidence to show that shares were held for investment and, moreover, assessee apart from using his own funds for investment in shares, had also resorted to huge borrowings, Assessing officer was justified in holding that amount in question was liable to tax as business income

Facts

- The assessee was holding large number of securities. During relevant year, assessee filed his return wherein income from sale of shares was shown as short term capital gain.
- The Assessing Officer took a view that assessee kept the shares as stock-in-trade and thus income arising from sale of shares was liable to tax as business income.
- The Commissioner (Appeals) confirmed the order passed by the Assessing Officer.
- On second appeal:

Held

- The Assessing Officer found that assessee has earned business income merely of Rs. 83,142. However, on sale and purchase of shares assessee has earned Rs. 65,55,066 with a transaction turnover of Rs. 17.79 crores. The assessee has also earned speculative profit amounting to Rs.1,29,025 on account of intraday transactions/speculative transactions, which was not disclosed in return, is evident that assessee is in business. Thus, from the quantum of turnover and presence of the component of intraday trading, it was found that purchase and sale of securities was the usual trade or business of the assessee. The assessee was therefore, found to be involved mainly in business activities. It was also found that assessee has earned dividend of Rs. 3,71,459 only which was very meagre and negligible in comparison to the total sales and forms only 5.7 per cent of total capital gains.
- Further there is not even a single share out of total share transaction which has been retained by the assessee for more than 12 months as the long term capital gain shown by assessee was *NIL*. Shares are sold at considerable profit. The net investment made by assessee in assessment year under appeal was Rs. 2,62,89,244 and the amount of advance taken for purchase of shares was shown at Rs. 2.36 crores and the transaction turnover runs into Rs. 17.79 crores. It is, therefore, evident that scale of business activities is substantial. The Assessing Officer also found that income of the assessee from sale of share was 95 per cent as against the total activities conducted by the

assessee. The assessee also could not furnish complete details of share transactions before Assessing Officer, because it was finding difficult to furnish the actual details.

- The Assessing Officer also noted that in this case assessee has not filed any wealth tax return despite of the fact that he has shown investment in shares amounting to Rs. 2,62,89,244. Thus, the assessee is not treating the shares as investment in his books rather assessee was treating it as stock-in-trade. The Assessing Officer also found that assessee has no evidence on record which could prove that assessee has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment. The Assessing Officer also found that assessee has shown evidence of Rs. 30,59,007 due to 'K' Securities Ltd. Therefore, from this, it was concluded that some of the transactions were made through book entry of general entry. The assessee did not furnish any evidence to show that shares were held for investment or that he was having the object to make investment in shares. The Assessing Officer held that assessee kept shares as stock-in-trade. The findings of the fact recorded by the Assessing Officer in the assessment order have not been rebutted by the assessee through any evidence or material on record.
- It is, therefore, clear from the large number of transactions conducted by the assessee that purchase of shares was with an intention to make substantive profit on sales rather than to hold for long term to earn of dividend, interest or appreciation. The fact of assessee's intention in undertaking speculative transactions resulting in profit were also noticed on many such occasions. The assessee apart from using his own funds for investment in shares had also resorted to huge borrowing, thereby, confirming it to be the business activity of the assessee.
- The assessee's alleged investments were mostly short term and driven by market force and the business of sale and purchase was carried on by the assessee with an intention to make substantive profit rather than hold position by making long term investments. The sale and purchase of securities in this case is continuous and regular business activity of the assessee with an intention to earn profit on regular basis. The intention of the assessee in the facts and circumstances is very clear that assessee purchased and sold the shares to earn business profits only. In preceding assessment year, admittedly, no assessment have been made by the department. Therefore, what treatment has been given by assessee in the return of income, whether investment or stock-in-trade would not be relevant.
- It is thus clear that shares were purchased with a view to sell them at a profit and in fact, those shares were sold within the same accounting year, the conduct of the assessee was not to hold them as investment and earn some interest but to trade in shares. It was clear from the frequency and nature of transactions in shares. In the absence of any material to show that assessee had made investments only, the authorities below were correct in concluding that gains were assessable as business income.
- In view of the above, it is held that the authorities below have rightly assessed the income from 'profits and gains of business as from shares' and accordingly, the appeal of the assessee stands dismissed.