Profit from investment held as capital gains in earlier years can't be treated differently in subsequent year

Summary – The Delhi ITAT in a recent case of Second Leasing (P.) Ltd., (the Assessee) held that When assessee makes investment and chooses to rely on same and obtain a higher price out of it than what it originally acquired, enhanced price received is a realization of investment and, hence, same is to be treated as capital gain

Where assessee company had paid fringe benefit tax on travelling expenses incurred by it during year, travelling expenses could not be disallowed on account of personal expenditure

Facts

- The assessee filed its return of income declaring income by way of capital gain in respect of the investment of shares sold by it.
- The Assessing Officer was of the view that the volume and frequency of transactions were too high and accordingly such income was to be considered as business income as against capital gain declared by the assessee. Accordingly, he taxed the short-term capital gain and long-term capital loss as business income.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On second appeal :

Held

- The main issue is taxing of the income earned by the assessee on the sale of its investment. The Assessing Officer has taxed the same as business income as against capital gain declared by the assessee. From the facts it is evident that assessee has been making investment in shares. In the past, the income arising on such investment has been accepted as capital gain. However, during the year the Assessing Officer did not accept the same. It is an admitted fact that assessee has treated such transactions as investments in its books of account. This fact also gets support from the fact that investment carried forward from earlier year was declared as such in the balance sheet of the preceding year. The Assessing Officer has treated even such investment as business and taxed the same under the business head. The assessee following its earlier practice has also accounted for purchase of shares during the year as investment. Some of these investments have been sold during the year which resulted into a short-term capital gain. The Assessing Officer has treated such short-term capital gain as business income ignoring the accounting treatment. The basis for such change as alleged by the Assessing Officer is the number of transactions. One has examined the details of the purchase and sale of shares during the year. On perusing the same, it is found that the contention of the assessee to the effect that Assessing Officer has wrongly worked out the number of sale and purchase transactions is correct. During the year, the total transactions of purchases are just 36 and that of the sales are 49. There is considerable cogency in the submission of the assessee that the Assessing Officer has gone wrong in treating one transaction of purchase as multiple transactions merely because such purchase came from different sellers on the exchange. From the assessee perspective, it was a single order and hence it cannot be considered to be multiple transactions. Similar is the case of the sales made by the assessee. One has also perused the details and find that there is no intra-day transactions. In view of these facts, the Assessing Officer's finding that there were many transactions entered in a single day, is incorrect. The Assessing Officer has also referred to the balance sheet of the statement of affairs as on 31-03-2006, however, the same has been quoted in the assessment order. On going through this balance sheet, it is noted that the total available funds with assessee as on 31-03-2006 was Rs. 3.48 crores as against this, the investments were of Rs. 3.03 crores. Thus, it cannot be said that there were no sufficient funds with the assessee. The Assessing Officer has stated that the magnitude of the transactions was of Rs. 8 to 10 crores. In this regard, it is noted that the magnitude transaction at a given point of time was between 2 to 3 crores. The Assessing Officer has simply added the value of all the transactions during the year which is not the correct way. The assessee-company having released the gain on its investment is entitled to make further investments. All the transactions are delivery based and have been duly credited to the Demat account of the assessee. The Assessing Officer has drawn adverse inference on the basis that the assessee-company has borrowed funds and paid interest thereon. Borrowed funds can one of the parameter to decide whether the transaction is in the nature of trade but that does not mean that all transactions wherever there is any borrowed funds will be in the nature of trade. The assessee is entitled to make investment out of its own funds and if need be to borrow for the purpose of investment. Borrowing for the purpose of investment is not uncommon. As rightly pointed out by the assessee that people do borrow funds for purchasing house and it cannot be said that such transaction is in the nature of trade. As stated above, one has looked into the availability of the total funds with the assessee company and the transaction entered into by the assessee-company during the year and we are of the view that these transactions are on account of investments. It may be relevant to point out that the assessee has also received dividend during the year on such investments. Thus, the objective of making investments for realizing gain and dividend also get established. Considering these facts, the accounting treatment in the books of account of the assessee cannot be rejected. The books of account are essential evidences. The recording of transactions in the books is a primary evidence of the intention for which such investment or purchase has been made. There has to be material to reject such primary evidence. The same cannot be rejected merely because the Assessing Officer has a different view. A transaction has to be seen from the perspective of the person who has entered into that transaction. Further, delivery based transaction should be treated as those in the nature of investment and profit received therefrom should be treated as capital gain. In the present case, all the transactions are delivery based and, hence, the income arising from such investment is to be treated as capital gain.

- In the present case, the assessee all along has been making investment and accounting for the same as investments. This stand has been accepted in the past and there is no reason to differ with the same in the current year. The accounting treatment given in the current year being the same as in the earlier years, the Assessing Officer was not justified in altering the same. The issue whether the assessee is a trader or an investor is to be decided on the facts and circumstances of each of the case. When the assessee having made investment chooses to rely on the same and obtain a higher price out of it than what it originally acquired, the enhanced price received is a realization of investment and, hence, the same is to be treated as capital gain.
- In the background of the facts and circumstances of the case as explained above the Assessing Officer is directed to treat the income as capital gain declared by the assessee as against business income.