

No deduction towards acquisition of satellite distribution rights if films weren't exhibited on commercial basis

Summary – The Delhi ITAT in a recent case of Wig Investment., (the Assessee) held that where assessee declared profit on redemption of units of mutual fund as short term capital gain, in view of fact that only few such transactions took place during relevant year and no borrowed funds were utilised to purchase units of mutual fund, impugned order holding that profit in question was liable to tax as business income, was to be set aside

Facts

- The assessee-firm was formed with an object to carry out money lending business, trading, etc. and making investments in shares and securities.
- During relevant year, assessee earned profit on redemption of units of mutual funds which was declared as short term capital gain.
- The Assessing Officer took a view that assessee purchased units of mutual fund with an intention to resell same at profit and, thus, amount in question was liable to tax as business income.
- The Commissioner (Appeals), however, accepted assessee's claim that gain arising out of redemption on mutual fund was to be assessed under the head capital gain and not as a business income.
- On revenue's appeal:

Held

- The Assessing Officer has first of all has tried to draw an inference from the 'objects' given in the original partnership deed dated 12-7-2005 and amended Partnership Deed dated 31-8-2005 that earlier the assessee firm intended to trade in securities and mutual funds which has been subsequently the amended and word 'business' has been removed in the amended partnership. If the assessee has amended its clause immediately after one month of its Partnership Deed whereby the word 'business' has been removed before the phrases, 'stock, shares, debentures, bonds, Mutual funds, or any other securities' and in place the word 'invest' has been inserted; and the word 'business' is now appearing before the words 'lending of monies for interest.....', then how such an amendment be adversely viewed to reach to a conclusion that assessee firm intended to do business in shares, securities and mutual funds. If the assessee firm has decided that it will do investment in shares, securities, mutual fund, etc. and the business activities will only be in money lending business, then it cannot be inferred that the assessee intended to trade in securities and mutual funds also. Moreover, here in this case it is an undisputed fact that the assessee has undertaken transaction of 15 mutual funds and the total redemption value of such mutual funds

amounting to Rs. 97.23 crores on which short term capital gain of Rs. 4,18,84,950/- has been shown. One of the observations of the Assessing Officer is that the Partnership Firm has to carry business only and if it has formed only for the purpose of making an investment, then it is not a valid Partnership Firm. Such an observation is *de hors* any express provision of law cannot be sustained because, firstly, neither in the Partnership Act nor in the Act there is any such provision that Partnership Firm can earn income only from carrying on the business; and secondly, it is not necessary that profits earned from business alone can be shared amongst the partners and not any other income earned by the Partnership Firm. There could be income from any source, like capital gain, income from house property, income from other sources, etc. which can be shared. Thus, this reasoning of Assessing Officer is devoid of any merits.

- One very important fact here is that the entire transaction was on account of redemption of mutual fund which was neither freely tradable nor exchangeable in the market. It is a transaction between two persons, that is, person buying the MF and the other is Mutual Fund Manager who facilitates the fund and it can only be redeemed from the same mutual fund manager from whom it has been purchased. Therefore, it would be very difficult to hold that one would carry out business of mutual funds and will not make any investment. If any item is purchased from one person which can be sold or redeemed to that person alone, then it cannot fall into the category of freely traded commodity. For instance, if the FDR is made from a particular bank then same can be encashed by that particular bank alone and it cannot be treated as tradable commodity. The concept of 'business' alludes to the concept of systematic activity carried out with an object to earn profit. Where investment is the motive then endeavour is to maximise the gain on such investment, but it does not mean that every gain on an investment is always in the nature of trade for profit. Here it is not a case where the mutual funds have been rotated again and again to purchase and sell the same which is a typical feature in a business, *albeit* here in this case as pointed out earlier, only 15 transactions had been undertaken for redemption of mutual funds in relevant year and investment in the same mutual funds had not been made and redeemed time and again. The purchase of mutual funds has been classified as 'investment' in the books of account and in the balance sheets and such a treatment is continuing in the subsequent periods also and at no point of time, they have been treated as 'stock in trade' in the books of account. Thus, the intention of the assessee right from the day one was to make investment in the form of mutual fund and not for the trading. This is also fortified by the fact that no borrowed funds have been utilised in such an investment. The computation and the details of short-term capital shows that mutual funds were held and redeemed mainly on maturity date which again indicates that the intention for purchase of mutual funds was only for the purpose of investment and held for benefits accruing thereon. Further on perusal of the profit and loss account it is seen that there is no expenditure debited which can be said to be incidental for the business purpose.
- Accordingly, on facts and circumstances of the case Commissioner (Appeals) has rightly held that redemption of units of mutual funds is to be taxed as capital gains and not as business.