

Sale of shares demarcated as investment in balance sheet chargeable to tax as capital gains

Summary – The Rajkot ITAT in a recent case of Pratish Manilal Modi (HUF), (the Assessee) held that where assessee had clearly demarcated shares as investment in its balance sheet, profit arising on sale of shares was chargeable to tax as capital gains

Facts

- The assessee HUF was engaged in the business of trading in shares and securities. During year, the assessee had sold certain shares and the income arising from said sale was shown under head capital gain.
- The Assessing Officer observed that the assessee was carrying on the investment in shares activity in a systematic manner. The time gap between the purchase and sale of shares was varying between few days to few months. After considering the magnitude of the transaction, he was of the view that the assessee was carrying out a trading activity which was wrongly being classified by the assessee as investment activity. Accordingly, the Assessing Officer was of the view that the assessee should not have shown income under the head long-term capital gain. But the income should be shown under the head income from business and profession.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second appeal:

Held

- As per the CBDT circular No. 6/2016, dated 29-2-2016, the case on hand falls under the clause 'c' and it is pertinent to take guidance from the CBDT Circular No. 4/2007, dated 15-6-2007.
- On perusal of the above circulars it is clear that the assessee can maintain two portfolios one for trading in the shares and the other one is for the investment in shares and the only requirement of the circular, both the activities of the assessee should be clearly demarcated in the books of account. As the assessee has not shown any activity from the trading of shares and there was also no closing stock shown in the financial statement. Therefore, the assessee is dealing only in the investment activity as evident from the classification shown by the assessee under the head investments. From the balance sheet, entry of the assessee it is clear that the assessee has demarcated its shares under the head investment. Therefore, the circular issued by the CBDT applies to the instant facts of the case. Therefore, keeping in view the provision of the circular issued by the CBDT, the income from the investment of share on account of sale/purchase should be liable to tax under the head capital gain.
- The revenue has accepted the activity of investment in the shares in earlier years as well as subsequent years which was also not disturbed by the revenue. Therefore, the principles of

consistency need to be followed without any deviation when there is no change in the facts and circumstances of the case from the earlier years.

- In view of above, the frequency, magnitude of the transaction in a systematic manner cannot be the criteria to hold that the assessee is engaged in a business activity of shares.
- In case on hand, there is a clear demarcation by the assessee in its books of account.
- In view of the above the order of the authorities below is reversed. Thus, the order of the Commissioner (Appeals) is set aside and the Assessing Officer is directed to treat the income from the sale and purchase of shares under head capital gain.