



* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 25.09.2008
Judgment delivered on : 03.10.2008

+ **ITA 381/2003**

**COMMISSIONER OF
INCOME TAX DELHI**

..... Revenue

versus

R.K.DHAWAN

..... Respondent

Advocates who appeared in this case:

For the Revenue : Mr R.D.Jolly
For the Respondent : Mr Hemant Kr Chaudhary

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

- | | |
|---|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. To be referred to Reporters or not ? | Yes |
| 3. Whether the judgment should be reported in the Digest ? | Yes |

RAJIV SHAKDHER, J

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") preferred by the Revenue against the judgment dated 10th December, 2002 passed by the Income Tax Appellate



Tribunal (hereinafter referred to in short as “Tribunal”) in ITA No. 2994/Del/95, in respect of, assessment year 1992-93. The only issue which arises in the appeal is the treatment of sum of Rs.15,06,253/- by the Assessing Officer as business income, as against, long term capital gain as claimed by the assessee.

2. In coming to the aforesaid conclusion the Assessing Officer vide order dated 30th December, 1994 passed under Section 143(3) of the Act took into account the following circumstances:-

(i) the assessee had debited in his ‘income and expenditure account’ for the financial year ending 31st March, 1991 relevant to the assessment year 1991-92 a sum of Rs.14,826/- with a narration “long term losses in sale of securities”. It is important to note that return for the assessment year 1991-92 was processed and accepted under Section 143(1)(a) of the Act;

(ii) the nature of expenses and the volume of shares dealt with by the assessee reflected a full fledged business of trade in shares and;



(iii) lastly, the assessee had failed to maintain a separate account, in respect of, those shares which were traded, as against the ones, held as investment.

1.1 By virtue of the aforesaid assessment order a sum of Rs.15,06,253/- was added back to the income of the assessee for assessment year 1992-93 as income from business.

2. Being aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred in short as CIT(A)). The CIT(A) by his order dated 24th March, 1993 directed the Assessing Officer to treat the sum of Rs.15,06,253/- as long term capital gain and not as income from business in the shares. The CIT(A) in coming to this conclusion returned the following findings:-

- (i) that the assessee had been investing in shares from 1980 till the assessment year 1990-91;
- (ii) the assessee had commenced the business of dealing in shares in the assessment year 1992-93;
- (iii) separate accounts were maintained, in respect of, the assessee's business in shares and those purchased as investment;



- (iv) the shares which were sold, and on which, profit to the tune of Rs.15,06,253/- had been earned by the assessee were shares which had been purchased by the assessee between 1980 to 1991 and;
- (v) lastly, there was no evidence on record to show, that the shares which had been kept for investment, had been converted into 'stock-in-trade of business at any point of time'.

3. The Revenue being aggrieved by the aforesaid order of the CIT(A) preferred an appeal to the Tribunal. The Tribunal by the impugned judgment sustained the order of the CIT(A). The Tribunal categorically noted that there was no dispute that the assessee had been holding shares both as stock-in-trade, as well as, investments. It also noted that the books of accounts in respect of shares which were part of the assessee's stock in trade were maintained separately; which were duly audited, as also in respect of, which tax audit reports had been generated and placed on record. The Tribunal also returned a finding of fact that there was no dispute that the shares held by the assessee in respect of which, capital gain earned was offered for tax were purchased from 1980 onwards and had been shown as investment in earlier years. The Tribunal pointedly made a reference to the entry in the 'income and expenditure account' for the immediately preceding assessment year i.e.,



1991-92 and observed it was not relevant in respect of assessment year under consideration i.e., assessment year 1992-93. Furthermore, in view of the fact that the assessee had been able to satisfy the Tribunal that account with respect to shares which were traded was kept separately, and also, that no evidence whatsoever, had been placed on record by the Assessing Officer that the shares in respect of which, profit was made and offered to tax under the head 'capital gains' by the assessee, had been treated by the Assessing Officer, as stock in trade in the earlier years - it found no difficulty in concurring with the opinion of the CIT(A) that the profit from sale of shares held as investment was liable to be taxed under the head 'capital gains' in the hands of the assessee.

4. Having heard learned counsel for both the Revenue, as well as, the assessee, we are of the view that the orders of the Tribunal and CIT(A) do not call for any interference. Both the Tribunal and the CIT(A) have returned findings of fact that assessee had sold, in the assessment year under consideration, i.e., 1992-93, shares which were held as investment between 1980 and assessment year 1991-92, and that, these shares had not been treated as stock-in-trade by the Assessing Officer in the earlier assessment years. In view of the said finding, which, undoubtedly is a pure finding of



fact, in our opinion, no question of law, much less, a substantial question of law arises for our consideration. In the result the appeal is dismissed.

RAJIV SHAKDHER, J

BADAR DURREZ AHMED, J

October 03, 2008

da