

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

ITA NO.59/2016

BETWEEN

1. PR. COMMISSIONER OF INCOME TAX
C.R. BUILDINGS,
QUEENS ROAD,
BANGALORE-560001.

2. INCOME TAX OFFICER WARD 12(2)
BANGALORE.

... APPELLANTS

(BY SRI E.I.SANMATHI, ADVOCATE)

AND

M/S. TELESTAR INVESTMENTS PVT. LTD.
NO.314, RAHEJA ARCADE
KORMANGALA
BANGALORE
PAN: AAAC5746M

... RESPONDENT

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:24/07/2015 PASSED IN ITA NO.1375/BANG/2011, FOR THE ASSESSMENT YEAR 1997-98 PRAYING TO DECIDE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE COMMON APPELLATE ORDER DATED:24/07/2015 PASSED BY THE ITAT, 'A' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. ITA NO. 1375/BANG/2011 FOR A.Y. 1997-98 AS SOUGHT FOR IN THIS APPEAL; AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The appellants-Revenue has preferred the present appeal by raising the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Tribunal is in law in holding that the assessing authority is not right in treating profit derived of Rs.10,66,425/- on sale of shares under the head business income and

not under the head capital gains when the assessing authority has rightly treated the same as business income considering the intention of assessee for making profit by making investments in shares and materials on record which disclosed that assessee is a trader in stocks?”

2. We have heard Mr.E.I.Sanmathi, learned Counsel appearing for the appellants-Revenue.

3. It appears that after the matter was remanded earlier by the Tribunal. The Assessing Officer further considered the matter and found that merely because the purchase of the shares were shown as investment in the balance sheet is no ground to conclude that it was not the stock-in-trade and ultimately, found that it is profit of business and not a capital gain. In appeal before CIT (Appeals) at paragraphs-5 and 6, it was observed thus:

“5. The Hon'ble ITAT Bangalore A-Bench vide its order dated 08.09.2006 while setting aside the case to the file of the A.O had observed as under.

"It is not clear as to whether the assessee company used its own funds or borrowed funds for acquiring such shares. We are not aware as to whether the assessee company was valuing the stock-in-trade at cost price or market price. In case the stock-in-trade was valued at market price and such shares were not valued at market price while valuing the stock-in-trade, then such shares not to be treated to have been held as stock-in-trade. It is therefore felt that the A.O has not considered all the aspects before holding that such shares were held as stock-in-trade."

6. As directed by the Hon'ble ITAT the A.O had examined these details during course of assessment proceedings and mentioned in his assessment order that vide letter dated

26.11.2007 the A.R of the appellant stated that the shares which were sold were not acquired out of borrowed funds and all the shares purchased by the company were held as investments and valued at cost consistently from its inception and year after year. However while determining the nature of income the A.O did not consider these crucial points. As there is no evidence to show that the appellant held these shares as stock-in-trade at any point of time, I am unable to agree with the conclusion of the A.O that the sale proceeds represent income from business. In view of this the A.O is directed to treat the income on sale of shares as income from long term capital gains and accordingly the appeal is Allowed.

The aforesaid shows that the CIT (Appeals) found that as the investment was made from the fund of the Company and the investment made was shown as investment at the cost value from the inception, it could

not be termed as stock-in-trade and therefore, it should be treated as long term capital gain.

4. The Income Tax Appellate Tribunal in the appeal at paragraph-5 interalia observed, the relevant of which is as under:

“We find that the AO has not given any reasons for not accepting the assessee’s contention and also as to how these decisions are applicable to the facts of the case before him. Therefore, in our opinion the CIT(A) has rightly observed that the assessee's statement that the shares which were sold were not acquired out of borrowed funds and that all the shares purchased by the company were held as investments and valued at cost consistently from its inception and year after year, has not been rebutted by the AO with any evidence of the contrary. Therefore, we do not see any reason to interfere with the order of the CIT(A).”

5. The Tribunal found that the view taken by the CIT (Appeals) is right, as the investment and the value of the cost was consistently shown from its inception and as the said aspect was not rebutted by the Assessing Officer, the Tribunal did not interfere with the view taken by the CIT (Appeals).

6. The learned Counsel appearing for the appellants-Revenue by relying upon the decision of the Apex Court in the case of **Chennai Properties & Investments Ltd Vs. Commissioner of Income Tax** reported at **(2015) 373 ITR 673 (SC)** made an attempt to contend that the income should have been treated as that of the business income and not as that of the investment income or capital gain.

7. We may record that more or less, similar questions arose for consideration before this Court in

ITA No.567/2015 and the very decision of the Apex Court in the case of **Chennai Properties & Investments Ltd** (supra) was considered by this Court and it was observed that the question of giving treatment to the income of the property of the assessee as that from the investment or as a business income was also required to be considered in light of the factual aspects that what treatment was given to the income earned from the property whether it was that of the business income or the income from the house property.

8. In the present case, the peculiar facts are that the investment made was shown as investment and the cost was reflected throughout in the balance sheet and it was never treated as stock-in-trade. Further, if it was to be treated as stock-in-trade and the market value plus cost would have been considered, but such was not treated accordingly by the assessee in the

books of accounts. There was also lock-in period for holding of the shares. Under these circumstances, the view taken by CIT (Appeals) and confirmed by the Tribunal, would not call for interference.

10. A reference also be made to the decision of the Apex Court in case of **Commissioner of Income-Tax Vs. Chugandas And Co.** reported at **(1965) 55 ITR 17 (SC)** as well as the another decision of this Court in case of **Commissioner of Income-Tax Vs. Bhoopalam Commercial Complex and Industries (P.) Ltd.,** reported at **2003 (262) ITR 517** and the decision of Calcutta High Court in the case of **Shambhu Investment P. Ltd., Vs. Commissioner of Income-Tax** reported at **263 ITR page 143.**

11. In view of the above, we do not find any substantial question of law would arise for consideration.

Hence the present appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JT/-