IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM:

THE HON'BLE MR.JUSTICE NOOTY RAMAMOHANA RAO
&
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos. 500 and 501 of 2016

Commissisoner of Income Tax II,
121, Nungambakkam High Road,
Chennai 600 034. ... Appellant in both appeals

Vs

M/s. Indian Syntans Investments Pvt. Ltd.,
New No.12, (Old No.71),
III Main Road, Kasturba Nagar,
Adayar, Chennai 600020 ...Respondent in both appeals

Prayer: Tax Case Appeals filed under Section 260A of the IncomeTax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai dated 13.2.2015 in ITA.Nos.2643/Mds/2014 and ITA.Nos.2644 /Mds/2014 in respect of assessment years 2010-11 and 2011-12 respectively.

For Appellant : Mr.T.R.Senthilkumar.
For Respondent : Mr.R.Sivaraman

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by Nooty Ramamohana Rao, J.)

These two appeals relate to the same assessee, but, for two different years namely 2010-11 and 2011-12. These appeals have been preferred by the Revenue raising the following two substantial questions of law for consideration.

> *"1. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the profit on sales of shares is to be treated as Capital gains instead of business income as adopted by the Assessing Officer?*
>
> *2. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the assessee's income was under the head capital gains when the assessee's main activity itself is investment in shares?"*

2. Before resolving the above question as to whether the income realised by the assessee by way of sale of shares/securities is liable to be treated as business income or from capital gains, it will be relevant to spare a consideration to the contents of Circular No.6/2016 dated 29.2.2016 issued by the Central Board of Direct Taxes. It was clearly noted in the said Circular that with a view of set at rest the contraversy relating to application of the appropriate principle, as to where the income realised from the sale of shares and securities should be considered as income from capital gains or business income, certain principles have been evolved for guidance of the assessing officers. It was brought out therein that;

(1) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares and securities would be treated as its business income;

(2) in respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of such transfer, if the assessee <u>desires to treat the income</u> arising from the transfer thereof <u>as capital gain</u> the same <u>shall not be disputed</u> by the assessing officer. The only point that has been added to the condition No.2 was that once the assessee in a particular assessment year takes the stand that the income generated from the transfer of shares and securities is to be treated as income from capital gains, he shall not for the subsequent years be allowed to adopt a different or contrary stand.

3. In the instant case, Sri.R.Sivaraman, learned counsel for the respondent/assessee would submit that consistently, the assessee has been treating the income generated from the transfer of shares and securities from the assessment year 2004-05 onwards, <u>as income arising out of capital gains</u> and that was accepted by the department. Even for the subsequent years, the department has accepted such a stand adopted by the assessee. In that view of the matter, we do not find any ground to interfere in this appeal as the

NOOTY RAMAMOHANA RAO, J.

&

DR.ANITA SUMANTH, J.

controversy has been now set at rest by issuing Circular No.6 of 2016. Consequently very rightly the learned Standing counsel Mr.Senthilkumar does not pursue these appeals and accordingly they stand dismissed. No costs.

[N.R.R.J.,] [A.S.M.J.,]
28 .11.2016

msr
Index:Yes/No
Internet:Yes/No

Tax Case Appeal Nos. 500 and 501 of 2016

25.10.2016