IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.06.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No.732 of 2013

The Commissioner of Income Tax,
Chennai – 600 034. ... Appellant

Vs.

R.Raghavan ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 30.04.2013 in I.TA.No.1755/Mds/2012 for Assessment Year 2005-06 as against the order dated 28/06/2012 by The Officer of the Commissioner of Income Tax (Appeals)-VI in I.T.A No.522 of 2010 to 2011 for the Assessment year 2005 to 2006 and as against the order dated 29/12/2010 by the Office of the Assistant Commissioner of Income Tax, Business Circle-II, Chennai – 600 034 in P.A No/G.I.R No.AACPR9939H for the Assessment year 2005 to 2006.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

For Respondent : Mr.Kaushik
for S.Sridhar

JUDGMENT
(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.1755/Mds/2012 in respect of the Assessment Year 2005-06 on the file of the Income Tax Appellate Tribunal, “D” Bench, Chennai, the Revenue has filed the above appeal.

2.The assessee filed return of income for the Assessment Year 2005-06 declaring a total income of Rs.2,01,19,494/-. The return of income was processed under Section 143(1). The case was re-opened by issuing notice dated 10.03.2010 under Section 148. A notice under Section 142(1) was served on the assessee. The assessee is in the business of trading of shares, mutual funds, futures, options and money lending. The assessee filed the return of income for the Assessment Year 2005-06, 2008-09 and 2009-10 treating the gain arising from the sale of shares as short/long term capital gains. For the Assessment Year 2005-06, the case of the assessee was re-opened and notice under Section 148 was issued to the assessee on 10.03.2010. The Assessing Officer vide assessment order dated 29.12.2010 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 held that the profit from trading in shares, mutual funds, future, options and money lending is to be treated as normal business income and thus is liable to be taxed at 30%. Aggrieved over the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Appellate Authority held that the profits arising from the sale of shares held for more than 30 days is to considered as short or long term capital gain depending upon the period of holding and in cases where shares have been purchased and sold within 30 days, the profit arising from such transactions should be considered as business income.

3.At the time of admission, the following substantial questions of law arose for consideration:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that bonus units of Chola Freedom STF Units is to be treated as long term capital gains since the holding period is more than 12 months?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing the appeal of the assessee having come to the conclusion that shares held for more than 30 days is to be treated as capital gains and shares held less than 30 days is to be considered as business income and such bifurcation of 30 days is unsustainable?

4.The Tribunal found that there is nothing on record to show that the assessee was maintaining separate books of account for trading in shares and investment in shares. Further, the bonus units of shares were allotted to the assessee on 26.02.2004 and the same were sold by the assessee on 01.03.2005. Since the holding period is more than 12 months, the Tribunal has rightly come to the conclusion that the same has to be treated as long term capital gains. We do not find any error or irregularity in the findings of the Tribunal.

5.Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant-Revenue submitted that no finding need be given in respect of the 2^{nd} question of law and the same may be kept open.

6.As already the Tribunal has rightly decided the issue in favour of the assessee, we do not find any ground much less any substantial question of law to interfere with the order of the Income Tax Appellate Tribunal.

7.With the above observations, the Tax Case Appeal is dismissed. However, we are not giving any finding with regard to the 2nd question of law and the 2nd question of law raised by the Revenue is left open and may be decided in an appropriate appeal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Chennai, "D" Bench

2. The Commissioner of Income Tax (Appeals)-IV,
   Chennai.

3. The Assistant Commissioner of Income Tax,
   Business Circle-II, Chennai.

+1cc to Mr.M.Swaminathan,, Advocate, S.R.No.28496

T.C.A.No.732 of 2013

SSN(CO)
HS(22/07/2021)