IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 30806 of 2014
and
M.P. No. 1 of 2014

M/s.Indian Syntans Investments Pvt. Ltd.,
A Private Limited Company
Incorporated under the Provisions of the
Indian Companies Act, 1956,
Represented by its Managing Director
Mr.Kannan Narayanan
New No.12, (Old No.71), 3rd Main Road,
Kasturba Nagar, Adayar,
Chennai - 600 020. ... Petitioner

Vs

The Assistant Commissioner of Income Tax,
Company Circle II (3),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the Respondent and quash the impugned notice issued under Section 148 of the Act in PAN.No.AAAC11775K/2009-2010 dated 24.03.2014 and consequentially quash the proceedings in dated 14.11.2014.

For Petitioner : Mr.R.Sivaraman
For Respondent : Ms.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned notice dated 24.03.2014 issued under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2009-2010 and a consequential communication overruling objection of the petitioner for reopening of the assessment.

2. The case of the petitioner is that it is engaged in investments and trading of shares & securities. As far as

income from investments are concerned, the petitioner had treated the income as "Capital Gains", whereas the income from trading of shares were treated as "business income". This adoption of different methods of treating the income as "long term capital gains" and "income from business" was questioned.

3. The petitioner was thus issued with a impugned notice dated 24.03.2014 for the Assessment Year 2009-2010. It is the contention of the petitioner, that this difference in the accounting method and treatment of the income from two veridicals of the petitioner has been consistently followed by the petitioner from 2004 onwards till date. He further submits that the assessment for the Assessment Years 2004-2005 to 2006-2007 were completed and accepted. For the Assessment Year 2007-2008 alone, the assessment was revised under Section 263 of the Income Tax Act, 1961 and on further appeal, the said order was set aside by the Income Tax Appellate Tribunal vide order dated 21.09.2012 in ITA.No.1112 (Mds)/2012. No further appeal has been filed before the High Court.

4. It is further submitted that the appeal of the Income Tax Department, before the Division Bench of this Court in TCA.Nos.500 & 501 of 2016, against the order in ITA.No.2643/Mds/2014 and ITA.No.2644/Mds/2014 in respect of the Assessment Years 2010-2011 and 2011-2012 was dismissed following the clarification of the Central Board of Direct Taxes vide Circular No.6/2016 dated 29.02.2016. The relevant portion of the said circular reads as under:-

> "3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. Whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions taken place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following-
>
> a) 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/securities would be treated as its business income,

b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

c) In all other cases, the nature of transaction (i.e. Whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT."

5. The Division Bench of this Court in TCA.Nos.500 & 501 of 2016 dismissed the appeal filed by the Income Tax Department for the Assessment Years 2010-2011 and 2011-2012 with the following observations:-

"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 share 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 desires to treat the income arising from the transfer thereof as capital gain the same shall not be disputed 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 share 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 2004-2005 onwards, as income arising out of capital gains 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 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."

6. The Income Tax Department has also not filed any further appeal against the said order. Since the issue in the present case is covered by the aforesaid decisions of this Court, I find no merits in the impugned notice seeking to reopen the assessment and the impugned communication over ruling the objection of the petitioner.

7. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To
The Assistant Commissioner of Income Tax,
Company Circle II (3),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, sr no.10936

W.P. No. 30806 of 2014
and
M.P. No. 1 of 2014

PMK(CO)
RMP(25/03/2021)