

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, AM AND SHRI A.T. VARKEY, JM

ITA No.106/Del/2014
Assessment Year : 2010-11

DCIT,
Circle 15(1),
New Delhi.

Vs. Rajasthan Global Securities Ltd.,
301-303, CA Chambers,
18/12, WEA, Karol Bagh,
New Delhi.

PAN: AAACR4122R

(Appellant)

(Respondent)

Assessee By : Shri Kapil Goel, Advocate
Department By : Shri Vikram Sahay, Sr. DR

Date of Hearing : 10.03.2015
Date of Pronouncement : .03.2015

ORDER

PER R.S. SYAL, AM:

This appeal by the Revenue is directed against the order passed by the CIT(A) on 11.10.2013 in relation to the assessment year 2010-11.

2. The only issue raised is against treating the profit of Rs.15,91,05,689/- arising from sale of shares of Satyam Computers as 'Short-term capital gain' against 'Business income' assessed by the AO.

3. Briefly stated, the facts of the case are that the assessee, at the material time, was engaged in the business of trading of shares. Apart from that, it also kept itself engaged in 'Investment' in shares. During the year in question, the assessee earned, *inter alia*, a profit of Rs.16,41,33,017/- from the sale of shares of Satyam Computers Ltd., which was declared as 'Short-term Capital gain'. The AO observed that the assessee purchased 70,44,801 shares of Satyam Computers during the period 9.4.2009 to 3.6.2009 and such shares were sold in entirety during the period June,2009 to January, 2010 for a consideration of Rs.51.18 crore, realizing a profit of Rs.16.41 crore, on which security transaction tax (STT) was paid to the tune of Rs.6,39,749/-. On being called upon to explain as to why profit from sale of such shares be not considered as 'Business income' as against the 'Short-term capital gain' claimed by the assessee, it was submitted that the assessee was

maintaining two portfolios viz., 'Stock-in-trade' and 'Investment'. The assessee explained that most of the purchases were classified as stock-in-trade at the time of transaction itself and only a few transactions were considered as Investment, which fulfilled the company's investment policy. The assessee clarified that the shares of Satyam Computers were purchased with the intention of keeping them for a fairly reasonable period of time. These were purchased in huge quantities. The assessee also stated that it traded in almost 100 scrips in the capital market segment and out of these only one scrip was purchased and sold during the year which was classified as Investment and profit there from was taken as 'Short-term capital gain.' The reason for treating profit from sale of such scrips as Capital gain was given as the initial intention of the assessee to purchase and retain them for a considerable period of time and not for immediate resale. It was also stated that 70.44 lac shares of Satyam Computers were purchased which constituted investment of more than 43.65% of its net worth as on 31.3.2009. The assessee stated that these shares were kept for a period of nine months. The AO did not find any weight in the submissions advanced on behalf

of the assessee. He observed that in March, 2009 itself, the SEBI had given its nod for the bidding process to select an investor through open auction and on 13.4.2009, Tech Mahindra won the bid for acquiring 51% stake in Satyam Computers @ Rs.58 per share and, hence, made an open offer to all Satyam shareholders at this rate. He, therefore, held that the object of the assessee was not to stay invested in these shares and earn dividend, but, to realize immediate profit on increase in the price of such shares. Considering this and other reasons, the AO treated the profit of Rs.16.41 crore from sale of shares of Satyam Computers Ltd., as 'Business income.' The Id. CIT(A) got convinced with the assessee's submissions and directed to treat such shares as 'Investment' and the resultant profit as 'Short-term capital gain'. The Revenue is aggrieved against this view canvassed by the Id. first appellate authority.

4. We have heard the rival submissions and perused the relevant material on record. Before proceeding further, we want to make it clear that any decision to hold shares as 'Investment' or 'Stock-in-trade' depends on a host of factors. There can be no single criteria to decide

the nature of shares purchased. In fact, it is the cumulative effect of all the relevant factors, which is taken into consideration for reaching a conclusion as regards the nature of shares and the resultant income arising from their transfer. There may be some factors indicating the purchase of shares as investment, while others may point towards stock-in-trade. It is the holistic consideration of all such factors which is kept in view while deciding as to whether the shares purchased by the assessee constituted stock-in-trade or investment.

5. The factor which is claimed by the Id. DR to be strongly against the treatment of shares as 'Investment' is that the open auction was held on 13.4.2009 by the SEBI for selecting investor in which Tech Mahindra won the bid and the assessee started purchasing the shares of Satyam Computers from 9th April, 2009 and continued to do so till 3rd June, 2009. The matching of purchase dates close to 13.4.2009 were claimed to be indicative of the assessee's intention to reap the immediate profit on their sale. The argument of the Id. DR that the assessee entered into such shares at a time when they were at the lowest price and hence there

could be no possibility of making Investment, cannot be considered as decisive for holding such shares as stock-in-trade. A person may think of making investment in the shares of a company at a price which is quite low and, then, maintain position in it for a period by allowing it to prosper. There is no rule of purchasing shares as investment only when the price of shares of a company is at the peak.

6. There is Annexure to the assessment order which divulges the dates of purchase of these shares starting from 9th April till 1st June, 2009 on ten occasions and, thereafter, the sale started from 4th June, 2009 till 18th January, 2010. The assessee paid STT at the time of sale of such shares. This Annexure indicates that the assessee firstly purchased all the shares of Satyam Computers over a period of time and, thereafter, started their disposal. In other words, there is no frequent in and out of these shares.

7. It is manifest from page 10 of the impugned order that the assessee had the initial intention to hold these shares as 'Investment' which is discernible from the fact that these were entered into the 'Investment register' maintained u/s 372A(5) of the Companies Act, 1956 at the

time of their purchase. This is another reason to show the assessee's intention of holding shares in Satyam Computers as investment *ab initio*.

8. Another factor which is of paramount importance is the assessee's contention raised before the learned first appellate authority that these shares were purchased out of the assessee's own funds without making any borrowing. This argument of the assessee has not been controverted on behalf of the Revenue by any cogent material.

9. Apart from that, it is an undisputed fact that the assessee took delivery of such shares after making full payment and it was not a case of settling the transaction of purchase and sale of such shares during the settlement period itself. This is another reason to indicate that the intention of the assessee to hold them as Investment.

10. Another factor which needs to be mentioned is that the assessee was consistently holding some other shares as investment over a period of time and was regularly earning income from their sale by declaring profit as 'Short-term capital gain' or 'Long-term capital gain' depending upon the period of their holding. There is no doubt that

shares of Satyam Computers were not purchased or treated as Investment in any of the earlier years, but at least this factor shows that the assessee was also engaged in the purchase of shares as Investment and showing profit from their sale under the head `Capital gains`. This treatment of profit from sale of shares held as investment has not been disputed by the AO in the assessments made u/s 143(3) of the Act. The assessee has placed on record a copy of the assessment orders for immediately preceding assessment year in which there was `Short-term capital gain` of Rs.17.21 crore which has been accepted by the AO vide his order dated 29.12.2011. Similarly, there is an order passed u/s 143(3) for assessment year 2006-07 accepting that the assessee was engaged in the business as well as in investment of shares. A copy of such order dated 31.10.2008 is available on record from which it is manifest that there is no alteration in the character of income shown by the assessee. The principle of consistency in terms of the assessee holding shares as stock-in-trade as well as investment, cannot be lost sight of.

11. When we consider the cumulative effect of all the factors obtaining in this case, we have no doubt in our minds that the Id. CIT(A) rightly proceeded to accept the assessee's contention of purchasing the shares of Satyam Computers as 'Investment' rather than 'Stock-in-trade'. We, therefore, uphold the same.

12. In the result, the appeal is dismissed.

The order pronounced in the open court on 11.03.2015.

Sd/-

[A.T. VARKEY]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 11th March, 2015.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.