



**IN THE HIGH COURT OF KARNATAKA AT
BENGALURU**

DATED THIS THE 20TH DAY OF APRIL 2015

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA NO.158/2014

C/W

ITA NO.159/2014

ITA NO.158 OF 2014

BETWEEN

1.THE COMMISSIONER OF INCOME TAX
C.R.BUILDING,
QUEENS ROAD,
BANGALORE.

2.THE DY. COMMISSIONER OF INCOME TAX
CIRCLE 11 (5),
RASHTROTHANA BHAVAN,
NRUPATHUNGA ROAD,
BANGALORE.

... APPELLANTS

(BY SRI K V ARAVIND, ADV.)

AND

M/S KAPUR INVESTMENTS (P) LTD.,
NO.12, BRIGADE ROAD,
BANGALORE-560 001.

... RESPONDENT

(BY SRI CHYTHANYA K K, ADV.)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:29/11/2013 PASSED IN ITA NO.1188/BANG/2012, FOR THE ASSESSMENT YEAR 2006-2007 PRAYING THIS HON'BLE COURT TO:

1. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.
2. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.1188/BANG/2012 DATED:29/11/2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DY. COMMISSIONER OF INCOME TAX, CIRCLE-11(5), BANGALORE.

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... RESPONDENT

(BY SRI CHYTHANYA K K, ADV.)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:29/11/2013 PASSED IN ITA NO.1189/BANG/2012, FOR THE ASSESSMENT YEAR 2008-2009 PRAYING THIS HON'BLE COURT TO:

1. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.
2. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.1189/BANG/2012 DATED:29/11/2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DY. COMMISSIONER OF INCOME TAX, CIRCLE-11(5), BANGALORE.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, **VINEET SARAN J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are filed by the Revenue challenging the order of the Tribunal dated 29.11.2013 for the assessment years 2006-2007 and 2008-2009 in the case of the respondent-assessee. By the order of the Tribunal income from sale of shares by the assessee has been treated as capital gains, instead of business income as had been held by the Assessing Officer.

2. Briefly stated the facts of the case are :

The respondent-assessee Company is engaged in the business of finance and films. For the assessment years 2006-2007 and 2008-2009, the assessee had invested money in shares through the Portfolio Management Scheme of M/s.Kotak Securities Limited. Since there were regular transactions of sale and purchase of shares, the Assessing Officer, for the relevant assessment years, held the same to be 'business income'. Challenging the same, the assessee filed appeals before the Commissioner of Income Tax (Appeals), which were allowed. Against the orders of the Commissioner of Income Tax (Appeals), the Revenue filed appeals before the Income Tax Appellate Tribunal. In the first round, the Tribunal remanded the matter to the Commissioner of Income Tax (Appeals), which again held in favour of the assessee. Thereafter, the Tribunal by the impugned order, dismissed the appeals of the Revenue and hence, these appeals have been filed by the Revenue before this Court.

3. We have heard Sri K.V.Aravind, learned Counsel appearing for the appellants as well as Sri K.K.Chythanya, learned Counsel for the respondent and perused the record.

4. Sri K.V.Aravind, learned Counsel for the appellants-Revenue has raised the following two substantial questions of law for determination of this Court:

1. *Whether the Tribunal was justified on the facts and circumstances of the case in confirming the order of the Commissioner of Income Tax (A) that the profit on sale of shares was assessable as capital gain without appreciating the fact that the assessee had employed a portfolio manager and the employment of the portfolio manager implies that the assessee was serious in earning income through strategic/planned transactions of specific shares and thus indulged in business?*
2. *Whether the Tribunal was justified, on the facts and in the circumstances of the assessee's case, in holding that no*

interference was warranted in the order of the Commissioner of Income Tax (A) without appreciating the fact that the assessee itself had admitted dealing in derivatives and mutual funds as business income in the previous assessment years and therefore, the assessee's generation of profits by purchase and sale of shares after availing loan of Rs.60 lakhs for dealing in shares during the year should also be treated as part of the trading activity?"

5. The contention of learned Counsel for the appellants is that since the assessee had employed the services of a Portfolio Management Scheme for carrying on the sale and purchase of its shares, and had derived huge profits because of regular transactions, the same could be termed as nothing else but business of the assessee and thus, such income derived from the sale and purchase of shares should not be given the benefit of 'short term or long term capital gains', but should be assessed as 'business income'.

6. He has further submitted that for carrying on such transactions, the assessee had also taken loan, which further fortifies that the assessee was carrying on the business of sale and purchase of shares and the trading activity carried on by the assessee should not be treated as investment and the profits assessed as 'capital gains' but should be treated as 'business income'.

7. On the other hand, Sri K.K.Chythanya, learned Counsel appearing for the respondent- assessee has submitted that merely because the investments were handled by the Portfolio Management Service, the same would not amount to be the business of the assessee, as the assessee was merely investing its money in shares through the Portfolio Management Service instead of doing it itself. He has further submitted that there is a clear finding of fact recorded by the Tribunal as well as the authorities below that the assessee had not employed any persons of its own for managing the investments.

8. In support of his submission that investments managed through the portfolio management service could not be termed as 'business income' simply because of the services of Portfolio Management Service having been engaged, learned Counsel for the assessee has relied on decision of the Delhi High Court in the case of ***Radials International Vs. Assistant Commissioner of Income-tax*** reported in **(2014) (367) ITR 1 Delhi**. He has also relied on Circular No.4/2007 dated 15.06.2007 issued by the CBDT, which clarifies in what circumstances, the investments made by the assessee in shares could be termed as 'income from business' or 'income from capital gains'.

9. Sri K.K.Chythanya, learned Counsel for the respondent has also submitted that merely because some loan had been taken for investment in shares will not mean that the same would become business of the assessee, as there is nothing in law which prohibits purchase of shares for investment purpose after taking loan.

10. As regards the first question that merely because of employment of Portfolio Management Service for investment in shares, the same would become business income, we are of the opinion that the said issue has been dealt with at length by the Delhi High Court in the case of ***Radials International*** (supra), wherein, in similar facts, the question has been answered in favour of the assessee and against the Revenue. Detailed reasons for the same have been given in the said judgment with which we concur. Even otherwise, it is admittedly not a case where the assessee had engaged its own persons or had a separate business infrastructure to carry out its share transactions for the purpose of business. It is merely a case where the assessee has invested funds through the Portfolio Management Service.

11. In our opinion, investment through Portfolio Management Service, which may deal with the shares

of the assessee so as to derive maximum profits cannot be termed as business of the assessee but would only be a case of a more careful and prudent mode of investment, which has been done by the assessee. Funds which lie with the assessee can always be invested (for earning higher returns) in the shares either directly or through professionally managed Portfolio Management Scheme and by doing so, it would not mean that the assessee is carrying on the business of investment in shares. Profits from such investment, either directly or through professionally managed firm, would still remain as profits to be taxed as capital gains as the same will not change the nature of investment, which is in shares, and the law permits it to be taxed as capital gains and not as business income.

12. As regards the second question of the assessee having taken loan and having invested borrowed funds in purchase of shares, we are of the view that the Income Tax Act does not prohibit the

assessee from making investments in capital assets after using borrowed funds. The Tribunal has also considered this aspect of the matter and decided in favour of the assessee and we see no reason to differ with such opinion of the Tribunal.

13. We have also gone through the Circular of the CBDT dated 15.06.2007 and are of the opinion that the findings arrived at by the Tribunal are in conformity with the guidelines issued by the said Circular.

14. In view of the aforesaid, we are of the opinion that no substantial question of law arises for determination of this Court.

15. The appeals are accordingly dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

JT/-