

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./ITA No.5545 & 5546/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10 & 2010-11)

The ITO - 3(1)(2), Room No. 666/668-A, 6 th Floor, Aayakar Bhavan, Mumbai- 400 020.	Vs.	Smt. Madhuri R. Dhoot 4B, 1L, Palazzo, Little Gibbs Road, Malabar Hill, Mumbai- 400 006.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADPD1056E		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से / Revenue by : Shri. K.V.Vispute
निर्धारिती की ओर से / Assessee by : Shri. M.Subramanian

सुनवाई की तारीख / **Date of Hearing** : **25/08/2016**

घोषणा की तारीख/**Date of Pronouncement** : **25/08/2016**

आदेश / O R D E R

PER RAM LAL NEGI, JM

These appeals have been preferred by the revenue against common order dated 04/06/2014 passed by the Ld. CIT(Appeals)-27, Mumbai, for the Asst. years 2009-10 & 2010-11. Since both these appeals pertain to the same assessee for the different assessment years, the same were clubbed and heard together and are being disposed of by this common order for the sake of convenience. Since the issues are involved in both the appeals are identical. We take brief facts of the case of the assessee pertain to the Asst. year 2009-10 as lead case.

ITA 5545/Mum/14 A.Y. 2009-10

2. The assessee filed its return of income for the A.Y. 2009-10 on 11/09/2009 declaring total loss of Rs. 1,58,62,670/- after excluding of Rs. 40,09,901/- as short term capital loss and Rs. 92,98,467/- as long term capital gain, treating the same as exempt income. The A.O treated the Long term capital gains and Short term capital loss as income from business and assessed the total loss at Rs. 62,97,389/-.

3. In appeal the Ld. CIT(A) directed the AO to treat the entire income from share transactions as income from capital gain instead of Business income. The revenue has challenged the impugned order on the following effective grounds of appeal:-

1. *“ Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in directing the A.O to treat entire income from share transactions as Income from Capital Gain instead of Business Income without appreciating the fact that the magnitude of transactions are voluminous in very frequent interval which clearly establish that the motive for transactions was to earn profit by pursuing an adventure in the nature of trade.”*

2. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition after relying on the decision of Ld. CIT(A) and Hon’ble ITAT in the assessee’s own case for A.Y. 2008-09 without appreciating the fact that the said decision has not been accepted by the Department and filed appeal before Hon’ble High Court”.*

4. At the outset the Ld. Authorised Representative (AR) for the assessee submitted that the assessee's case is squarely covered in favour of the assessee by the decision of Mumbai ITAT in assessee's own case, ITA No. 6053/Mum/2011 for A.Y. 2008-09. The Ld. DR, on the other hand relied on the findings of the AO.

5. We have heard the rival submissions and perused the record. We find that the identical issue has been decided in favour of the assessee in by the Co-ordinate Bench in assessee's own case ITA No. 6053/Mum/2011(supra) for the A.Y. 2008-09. The relevant portion of order reads as under:-

“4. We have heard the rival submissions and perused the relevant material on record. We find that the Hon'ble jurisdictional High Court in the case of CIT v. Gopal Purohit [(2011) 336 ITR 287 (Bom.)] has emphasized on the principle of consistency. In this case the Hon'ble High Court, dealing with similar issue, held that: “there ought to be uniformity in treatment and consistency when the facts and circumstances are identical”. As income from sale of shares has been consistently accepted as short term / long term capital gain in preceding years, we see no reason for observing departure for the current year. Respectfully following the precedent, we uphold the impugned order. These two grounds are dismissed.”

6. Since, the identical issue has already been decided in favour of the assessee in aforesaid case, we, respectfully following the view taken by the Co-ordinate Bench uphold the impugned order passed by the Ld. CIT(A) and dismissed the appeal filed by the revenue.

ITA 5546/Mum/14 A.Y. 2010-11

1. Since the facts and circumstances of the case are identical to the facts and circumstances of the present appeal except the amount involved and since we have allowed the identical ground of appeal of the assessee in ITA No. 5545/M/2014 aforesaid, we allow this ground of appeal of the assessee and dismissed the appeal filed by the revenue.
2. In the result appeal filed by the revenue for the A.Y's. 2009-10 and 2010-11 are dismissed.

Order pronounced in the open court on 25th August, 2016

Sd/-
(RAJENDRA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 25/08/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila