

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. G.D.AGARWAL, PRESIDENT
AND SH. KUL BHARAT, JUDICIAL MEMBER
ITA No. 3060/Del./2012 : Asstt. Year : 2008-09**

Shiva Insurance Agency Ltd. (Now Know as Shiva Parvati Mercantile (P) Ltd.) 72, M.M.Road, Rani Jhansi Road, Jhandewallan New Delhi PAN : AAHCS5107L	Vs	ITO Ward-8(2) New Delhi
(APPELLANT)		(RESPONDENT)

**Appellant by : Sh. Mayank Jain, CA
Respondent by : Sh. Kaushlendra Tiwari, Sr. DR**

Date of Hearing : 22.02.2018	Date of Pronouncement : 23.02.2018
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ORDER

PER KULBHARAT, J.M.

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals) – XI, New Delhi dated 01.03.2012 pertaining to assessment year 2008-09.

2. The assessee has raised following grounds of appeal :-

“1.That the facts and circumstances of the case the learned CIT(Appeal). Error red in upholding the order of learned A.O. considering long term capital gain of Rs. 48,75,874/- and short

term capital gain of Rs. 2,97,314/- on sale of shares as normal business income.

2. That the facts and circumstances of the case the learned A.O. error red in not accepting the contention of the assessee that the shares held by it are for investment purpose.”

3. Briefly stated facts are that case of the assessee was picked up for scrutiny assessment, the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”.) by framing the assessment. The assessing officer made addition by treating the investment made by the assessee in shares as income from business. Against this, the assessee is preferred an appeal before the CIT(A) who after considering the submissions confirmed the addition. Now the assessee in further appeal.

4. The only effective ground is against treating the surplus arising out of investment made in shares as business income. Ld. Counsel for the assessee submitted that the assessee has been showing the investments in his accounts as long term capital gain and short term capital gain and ld. Counsel is further submitted that by mistake the assessee in the year under appeal treated the investment in shares as stock and trade would not change the character of the transactions. On the contrary, ld. DR supported the order of the authorities below and he has also pointed out that the volume and frequency of transaction demonstrates that the assessee was engaged in business activity in trading of shares.

5. We have heard the rival contentions perused the material available on record, it is the contention of the assessee that he has been reflecting the investments in books of accounts and accepted by the revenue as long term and short term capital gain. Therefore, in the year, under appeal also same should be treated as investment. We have given our thoughtful consideration to the

facts of the present case. After considering the totality of the facts and the material placed before us, we are of the view that the contention of the assessee that the investment in shares was reflected as stock in trade by mistake, require verification therefore, the orders of the authorities below are set aside. This issues is restored to file of the assessing officer for decision afresh. Needless to say that the assessing officer would afford sufficient opportunity to the assessee.

6. In the result, the grounds of the assessee's appeal are allowed for statistical purposes.

(Order Pronounced in the Open Court on 23/02/2018).

Sd/-
(G.D.AGARWAL)
PRESIDENT

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 23/ 02/2018

BINITA

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft dictated on	22.02.2018		
2.	Draft placed before author	22.02.2018		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			