

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3208/MUM/2018
Assessment Year: 2014-15**

Asstt. Commissioner of
Income Tax-32(3),
Mumbai, Room No. 108, 1st
floor, Bldg. No. C-11,
Prayakshakar Bhavan,
Bandra Kurla Complex,
Bandra (East),
Mumbai-400051.

Vs. Rajesh D Nandu (HUF) A-
103, Aditya Tower,
Chandavarkar Road,
Borivali (W), Mumbai-
400092.

Appellant

**PAN No. AAAHR1531H
Respondent**

Revenue by : Mr. D.G. Pansari, DR
Assessee by : Mr. Mitesh N. Shah, AR

Date of Hearing : 08/07/2019
Date of pronouncement : 10/07/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax-44, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal raised by the revenue reads as under:

"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that income of the assessee from share transactions is income taxable under the head Capital Gain and not Business Income without

appreciating the fact that assessee has done share transaction high value during the course of the year.”

3. Briefly stated, the facts are that the assessee filed its return of income for the assessment year (AY) 2014-15 on 19.09.2014 declaring total income at Rs.1,81,71,349/-. It had claimed short term capital loss of Rs.2,50,347/- and long term capital gains of Rs.5,32,31,393/-. In response to a query raised by the AO during the course of the assessment proceedings, the assessee filed the details. However, the AO assessed the income from share trading as business income on the ground that in the previous assessment years, the income shown under the head capital gain was assessed under the head business income.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A), referring to the order of the Tribunal in assessee’s own case for AY 2010-11 allowed the appeal filed by the assessee.

5. Before us, the Ld. DR relies on the order of the AO. On the other hand the Ld. counsel of the assessee refers to the order of the ITAT ‘D’ Bench, Mumbai in assessee’s own case for AY 2012-13 and submits that the order passed by the Ld. CIT(A) be confirmed.

6. We have heard the rival submissions and perused the relevant materials on record. We find that the same issue arose before the ITAT ‘D’ Bench, Mumbai in assessee’s own case for AY 2012-13 in ITA No. 5561/Mum/2017. The Tribunal vide order dated 12.03.2019 held as under:

“4. The CIT (A) relying on the Tribunal’s decision for assessment year 2010-11 In ITA No.1721/Mum/2014 order dated 2.3.2016, wherein, orders for earlier years of ITAT decisions were followed, allowed the claim of the assessee. The CIT(A) also considered the CBDT Circular No.6 dated 29.2.2016 on this issue. The CIT(A) allowed the claim of the assessee by observing in paras 23.3. to 3.5 as under:

“3.3 I have carefully gone through the assessment order and the written submission of the appellant. I have also studied the order of

IT AT in appellant's own case. In the assessment order the only reason given by the AO for treating the income arising from the sale of shares as business income instead of income from capital gain is the fact that in previous assessment years also on similar issue the same thing was done by assessing officers. Apart from this no enquiry or investigation seems to have been done by the Assessing Officer But on similar issues and facts the Hon'ble IT AT has already decided the appeal of the appellant for AY 2010-11 in his favour,(The Hon'ble IT AT D Bench vide its order dated 02,03.2016 has observed We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by the lower authorities and after considering the same, we found that since the Id. CIT(A) has based his entire findings bypassing a reasoned and speaking order and also by taking into consideration the principles of consistency as similar situation was found in the case of Rajesh D Nandu, an individual in which similar issue was decided in favour of the assessee vide order dated 12,02.2010 and 11.07.2013. Subsequently those orders were also upheld by the IT AT (Mum) Bench in ITA No. 4330/Mum/2009 (AY 2006- 07) and in ITA No. 3384/Mum/2010(AY 2007-08). And since the facts of present case are identical therefore, CIT(A), has rightly held that there is no reason to take different decision in the case of HUF and CIT(A) has also followed the case of 'Gopal Purohit'. In view of the above, we are of the view that the order passed by the Id CIT(A) do not require any interference from us therefore, we uphold the same. In the result, the revenue's appeal is dismissed.

3.4 It is seen from the facts, of-the case that the appellant has consistently shown shares as investment in his balance sheet. The question of treatment of income arising out of sale of shares has been conclusively decided by the CBDT in its circular no. 6 dated 29.02.2016. The relevant portion of the said circular is reproduced as below:

"Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-intrade, the income arising from-transfer of such shares/securities would be treated as its Business Income,

3.5 It is obvious that the appellant has opted to treat the shares as investment rather than as a stock in trade. It is equally obvious that the appellant has been income arising out of sale of shares as income under the head capital gains. After considering the totality of facts, decision of ITAT Mumbai in appellant's own case and circular No.6 of 2016, I am of the opinion that income arising out of sale of shares which have been treated by the AO as business income will have to be treated as income under the capital gains. Grounds of appeal No.1 is therefore, allowed."

5. Aggrieved, the revenue is in appeal before the Tribunal.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the Tribunal is consistently following the orders of the assessment years 2006-07 to 2011-12 treating the income of the assessee under the head capital gains. We find that the activity from share transaction is capital gains either long term and short term as the case may be and not business income. As the Tribunal is consistently taking this view, we respectfully following the same, affirm the order of the CIT(A) and dismiss the grounds of appeal of the revenue."

6.1 Facts being identical, we follow the above order of the Co-ordinate Bench and uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 10/07/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/07/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai