

**आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGANESH, AM

**आयकर अपील सं./ ITA No. 5653 & 5654/Mum/2015**

(निर्धारण वर्ष / Assessment Years 2005-06 & 2006-07)

NVS Brokerage Pvt. Ltd. 702, Embassy Centre, Nariman Point, Mumbai-400 021	Vs.	The Asst. Commissioner of Income Tax, Range 4(2), 6 <sup>th</sup> Floor, Income Tax Office, Maharshi Karve Road, Mumbai-400 001
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAACN9184H</b>		

अपीलार्थी की ओर से / Appellant by	:	Shri Pramod Kumar Parida Ms. Sanjukta Chowdhury, ARs
प्रत्यर्थी की ओर से / Respondent by	:	Shri Satish Chandra Rajore, DR

सुनवाई की तारीख / Date of hearing:	14.08.2019
घोषणा की तारीख / Date of pronouncement :	21.08.2019

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/**  
**PER MAHAVIR SINGH, JM:**

These two appeals of assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-9, Mumbai, [in short CIT(A)], in ITA No. CIT(A)-9/cir.4/401 & 39/2014-15 dated 21.10.2015. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle-4(2), Mumbai (in short DCIT/ITO/ AO) for the A.Ys. 2005-06 &

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2006-07 vide order dated 14.03.2014, under section 143(3) r.w.s 254 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these two appeals of assessee is against the order of CIT(A) confirming the action of the AO in treating the gain arising out of sale of listed equity shares as business income as against declared by assessee as short term capital gain. For this, assessee has raised the identically worded grounds in both the years and facts and circumstances are also exactly identical. Hence, we will take the facts and grounds from AY 2005-06 in ITA No.5653/Mum/2015 and decide the issue. The relevant grounds raised by assessee in its appeal is as under: -

*“1. The Ld. Commissioner of income tax erred in holding, confirming and treating the Short Term Capital Gain of Rs. 85,65.906/- realized by your petitioner on sale of listed equity shares within 1 years of its purchase as Business Income.*

*2. The Ld. Commissioner of Income Tax has further erred in treating the various amounts received front the customer as the business receipts of your petitioner. Your petitioner submits that the various amounts received from Smt. Anahaita N. Shah, NVS Corporate Consultancy Services Pvt. Ltd and Mr. Nalin V. Shah were against dues from the said persons in respect of share transactions carried out on their behalf by your petitioner.*



3. *The Ld. Commissioner of Income Tax has further erred in confirming that the various amounts received from the above persons in respect of dues owed by them as loans given to your petitioner.*

*Your petitioner submits that it had not borrowed any amounts from any persons in respect of its business nor it paid any interest to any persons during the year.*

*Your petitioner further state that the entire amounts received from the above mentioned persons have never been utilized for the purpose of purchasing any shares by your petitioner.*

*Further, the petitions had requested for opportunity of being heard personally after the submission were filed. However, no such opportunity of personal hearing was granted to explain in a detailed manner.*

4. *Your petitioner submits that the various written submissions and detailed explanations given by your petition in respect of amount received from these three perons are not loan borrowed by the petitioner and all the relevant entries, ledger accounts, written explanation were submitted to support our case, but have*



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*not been carefully considered by the Ld. Commissioner of Income Tax.*

*5. Your petitioner submits that it had more than sufficient funds its own in the form of Share Capital, Reserve and Surplus amounting to ₹ 7,54,89,019/- against the Investment in shares amounting to ₹ 4,03,21,373/- as at 31.03.2005.”*

3. Briefly stated facts are that this is a second round of appeal for both the assessment years. The ITAT vide is common order dated in ITA No.5735/Mum/2008 for AY 2005-06 and ITA No. 2749/Mum/2009 for AY 2006-7 restored the issue to the file of the AO. The AO framed assessment order under section 143(3) read with section 254 of the Act dated 14.03.2014, whereby he has repeated the order of the AO passed earlier and has not examined the accounts of the assessee. Similarly, the CIT(A) also confirmed the action of the Assessing Officer. Aggrieved, now assessee is in appeal before us.

4. We have heard rival contentions and gone through the facts and circumstances of the case. We have gone through the paper book filed by the assessee and the accounts of the assessee. The assessee is a private Limited company dealing in shares and securities for its clients and earning commission. The assessee is a member of Bombay Stock Exchange. Admitted facts are that the assessee maintains multiple portfolio including income from brokerage and commission as well as earning of dividend from its own investments, interest and income from capital gains. The assessee has maintained its own portfolio i.e. investment made in purchase of shares and kept as investment in the balance sheet. The assessee has filed details of its own investment i.e. purchase of shares in various scripts and disclose the same in balance



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sheet as investment and kept for the same in its portfolio for about a year. The assessee has used its own funds for making investment in shares but the observations of the AO that assessee has obtained loan amounts for making investment, the assessee before us contended that the AO pointed out only three accounts i.e. account of Anahaita Shah, Nalin Shah and NVS Corporate consultancy services Pvt. Ltd. The Account of Anahaita Shah has a debit balance in trading account at ₹ 1,79,72,546/-, and this debit balance in the accounts of Anahaita Shah are the transaction in respect of purchase and sales effected by him i.e. trading account and further in the case of NVS Corporate Consultancy Services Pvt. Ltd. money received from Bombay Stock Exchange on account of release of additional base capital and the same was utilized for the amount returned to the respective parties. Similarly, the account of Nalin Shah has a debit balance and the same is in respect of purchase and sales effected by him in the trading account. It means that all the alleged loan amount are nothing but regular trading accounts and assessee has filed complete detail in respect of these accounts before the AO as well as before CIT(A) and even now before us in its paper book. It means that the finding of the AO that loan amounts were utilized for making investment is totally baseless and without any substance. We have gone through the entire balance sheet and only loan amount to ₹ 10 lacs standing in its balance sheet which is coming from earlier years. We also noted that the scripts held and shown as investment and gain arising out of the same, these scripts are kept in demat account for more than one month to 12 months. We noted that there is a distinction maintained by assessee between trading in shares and investment kept in its portfolio. In view of these facts, we are of the view that the profit arising out of sale of shares is capital gain and assessee has rightly disclosed the same as short term capital gain. Even otherwise, the Revenue consistently in



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earlier year, while framing assessment under section 143(3), has accepted the short term capital gain or capital loss as declared by assessee. Assessee has filed few of the assessment orders before us for earlier years. Even for the sake of consistency also Revenue should have accepted the claim of the assessee. In view of these facts, we reverse the orders of the lower authorities and allow the appeal of the assessee on this issue.

5. Similar are the facts for AY 2006-07 in ITA No.5654/Mum/2015 and taking a consistent view in this year also, we allow the appeal of the assessee.

**6. In the result, both, the appeals of the assessee are allowed.**

Order pronounced in the open court on 21.08.2019.

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21.08.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

**आदेश की 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 (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai