

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1959/AHD/2018  
निर्धारण वर्ष/Asstt. Year:2014-2015

Mansi Tushar Kansara, F-2 Manush Apartment, Near Kiran Park, Nava Vadaj, Ahmedabad-380013.  <b>PAN: AQWPK9626J</b>	Vs.	Income Tax Officer, Ward-2(2)(3), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Ketan H. Shah, A.R
Revenue by :	Shri Atul Pandey, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **12/10/2022**  
घोषणा की तारीख / **Date of Pronouncement**: **31/10/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-10, Ahmedabad, dated 26/07/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The only issue raised by the assessee is that learned CIT-A erred in confirming the order of the AO by treating the loss shown by the assessee under the head business and profession for Rs. 25,04,730.00 as loss under the head short-term capital loss.

3. The facts in brief are that the assessee in the present case is an individual and claimed to be engaged in the business activity of securities trading and brokerage income. The assessee in the year under consideration has carried out single transaction for the purchase and sale of securities on the same day which has given a loss of Rs. 25,04,730 only. As per the assessee, she has been engaged in the trading of securities since the last 4-5 years and therefore the same cannot be assumed as in the nature of short-term capital loss. The assessee also submitted that she has shown the transaction of purchase and sales of securities in the profit and loss account which were duly audited under the provisions of section 44-AB of the Act.

4. However, the AO found that the assessee has shown business income by way of brokerage from the activity of mutual fund amounting to ₹ 32,86,867.00 which was adjusted against the loss of Rs. 25,04,730 against the single transaction which was carried out in the month of March 2014. Thus, the assessee to avoid the tax on the brokerage income has set off the same against the losses incurred against the single transaction which was carried out on the same day. Thus, the AO held that the impugned loss has to be treated as loss under the head short-term capital loss. Aggrieved assessee preferred an appeal to the learned CIT-A who has confirmed the order of the AO.

5. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 171 and contended that the amount of sale-purchase from the securities was duly reflected in the trading account which is placed on pages 16 of the paper book. The learned AR further submitted that the revenue in the earlier assessment year 2013-14 has accepted the same amount of transaction as business activities of the assessee. The copy of the assessment order for the assessment year 2013-14 is placed on pages 57 and 58 of the paper book.

7. On the other hand the learner DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the revenue in the own case of the assessee in the earlier assessment year i.e. 2013-14 has accepted the activity of the assessee of securities trading as business income which is evident from the assessment order placed on pages 57-58 of the paper book. There is no difference in the facts of the year under consideration viz a viz in the immediate preceding assessment year. Therefore, we are of the view that the rule of consistency should be followed by the revenue. As such the revenue cannot take different stand for different assessment year until and unless there is some change under the provisions of law or facts. But at the time of hearing the learned DR before us has not brought any distinguishing feature in the facts or the provisions of law. Therefore, we are of the view that the rule of consistency needs to be adopted. We also draw support and guidance from the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Muthoot M. George Bankers reported in 159 taxman 22 wherein it was held as under:

*"7. This Court has time and again taken the view that there must be some consistency in the stand of the revenue and they cannot pick and choose cases in which to file an appeal in respect of some assessee and not to file an appeal in respect of identical orders in respect of another assessee. This view has also been expressed by the Supreme Court on several occasions and despite that we find that the revenue insists upon taking such arbitrary decisions for which there is no iota of justification. If the revenue puts forward some reason for its differential treatment, that will, of course, be considered on merits but in this particular*

*case there is no such reason except to say there is no res judicata or estoppel. The rule of consistency must be followed by the revenue, which they have failed to do in this particular case."*

8.1 We also draw support and guidance from the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Forest Development Corporation of Mah. Ltd reported in 84 taxmann.com 294 wherein it was held as under:

*"10. In the present case, no distinction in facts or law has been shown to us in the earlier order of the Tribunal dt.22.8.2006 for the Assessment Year 2003-04 and the impugned order. Nor any submission has been made before us to show why the reasons found in the order dt.22.8.2006 which are incorporated in the impugned order are not sustainable in law. This would have to be shown as the impugned order merely relies upon the order dt.22.8.2006 of the Tribunal for the Assessment Year 2003-04. In fact, the Revenue has even not annexed the copy of the order dt.22.8.2006 for the Assessment Year 2003-04 of the Tribunal to the appeal memo.*

*11. In the above view, we see no reason to interfere with the impugned order of the Tribunal. Thus, we hold that, in the peculiar facts of this case, no substantial question arises for our consideration."*

8.2 Therefore in our considered view the loss shown by the assessee cannot be treated as loss under the head capital gain. As such we direct the AO to treat the loss incurred by the assessee as discussed above under the head business and profession. Thus, we set aside the order of the learned CIT-A with the above direction. Hence, the ground of appeal of the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 31/10/2022 at Ahmedabad.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 31/10/2022  
Manish