

**आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**NAGPUR BENCH : NAGPUR**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND**  
**SHRI DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपीलसं. / ITA No.323/NAG/2017**  
**निर्धारणवर्ष / Assessment Year : 2006-07**

Smt.Veena Maheshwari, 2 <sup>nd</sup> Floor, 52/2, Kinkhede Lay Out, Temple Road, Nagpur – 440001. PAN: ABXPM 3150 B	Vs.	The Dy.CIT, Circle-1, Nagpur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri G.J.Ninawe – DR
Date of hearing	16/11/2022
Date of pronouncement	10/01/2023

**आदेश/ ORDER**

**Per S.S.Godara, JM:**

This assessee's appeal for Assessment Year 2006-07 is directed against the Commissioner of Income Tax(Appeal)-1, Nagpur's dated 11.05.2017 in case no.CIT(A)-1/148/2014-15, in proceedings u/s.143(3)r.w.s 147 of the Income Tax Act, 1961 [in short "the Act"].

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. The assessee's first and foremost substantive ground herein seeks to reverse both the learned lower authorities action treating her

profits derived from sale of shares amounting to Rs.29,92,440/- as business income than capital gain as per her stand. The CIT(A) detailed discussion to this effect reads as under:

*5.0 Appellant's submissions along with assessment order and records have been considered carefully. Regarding addition of Rs.29,92,440/-, it is seen that the appellant has declared gains made on sale of 17,886 shares of M/s Virangana Steel Ltd. as LTCG on the ground of holding period; their disclosure & accounting in appellant's balance sheet as investments and valued as such & not as stock-in trade valued at cost or market price whichever is lower; & that they have not been acquired out of any borrowed funds. These may be relevant factors in determining as to whether the profit made out of these sale transactions are Capital Gains or business income. At the same time, one cannot overlook the fact that the appellant has acquired majority of these shares, 16786 shares out of 17886 sold, from her father-in-law, viz Shri. Krishna Maheshwari through gift deed dated 01.10.2005 only & have been entered in appellant's name in the company's register on 15.10.2005 before being sold on 27.03.2006 for total consideration of Rs. 26,82,900/- The appellant's reliance on fact of holding period stated to be many years on the ground that the previous owner i.e. appellant's father-in-law has acquired them during the years 1994 to 2005 may be relevant for purposes of computation of capital gains i.e. whether STCG or LTCG. However in the appellant's case, it is important to note that during the year appellant's husband viz. Shri Manoj Maheshwari has been holding the post of JT. CEO in the said company i.e. Shri Virangana Steel Ltd & is involved with this company since its commencement. The said company has been allocated Marki & Mangali II,III & IV Coal blocks in Chandrapur district for captive mining in Sept,'2005. Thus, there can be no denying the fact that the appellant is well aware of this fact of allocation of coal block & subsequent scheme*

*of transfer of its management to the other group. This leads one to conclude that the appellant, who has acquired these shares through gift on 01.10.2005 & has sold them on 27.03.2006, has done these transactions with sole purpose of earning profits. The gamut of entire transactions i.e. acquisition of shares, sale thereof, opening of capital gains account, claim of deduction made u/s 54 has been given facade of capital gains earning when they, in fact, pertain to business income as per provisions of section 2(13) of the IT Act mentioned & analysed in detail by the AO in Page-4 to 8 in the assessment order. The same is not reproduced here for the sake of brevity. Had it been appellant's intention to keep gifted shares on long term basis as investment, her behaviour would have been otherwise. No single fact has a decisive significance in coming to a conclusion regarding a particular transaction. One has to look at the cumulative effect of all the facts, circumstances and purposes in a given case to arrive at a conclusion as to whether the transaction involved is an instance of investment or an adventure in the nature of trade. Further, motive/ purpose is never irrelevant in any of these cases. What is desirable is that it should be realized clearly that it can be inferred from the surrounding circumstances in the absence of direct evidence of the seller's intention and even if necessary in the face of his/ her own evidence. So, the issue is to be decided on consideration of all the relevant facts & circumstances involved in peculiar circumstances. It has further been held by Courts that the fact as to whether shares are held as trading assets or as investments is an issue which can not be decided once for all. Such an issue has to be examined separately for each assessment year in the light of the circumstances prevailing in that year. Further what primarily influences one is the nature of the subject-matter of sale, the time period involved between acquisition through gift of these shares & sale thereof with the fact that the profit that was anticipated. There is no material adduced by the appellant to show any urgency to cash the shares so soon after their acquisition. This fact particularly seems to point against the*

*acquisition of these shares as an investment and the same being sold for any purpose other than making a profit keeping in view the information of allocation of coal block and change of management of the said company where her husband is the Jt. CEO. The appellant's contention that there has been no commercial motive as it relates to shares in a private company which are not normally put in the share market for purchase or sale cannot be accepted in the given facts & circumstances of the case. The appellant's reliance on various case laws, as mentioned in her submissions, is also not found acceptable in that decided cases will help only to a certain extent for extracting the general principles to decide the character of a transaction as of a trading one or an adventure in the nature of trade, but their application to particular facts will depend upon the total impression one may form of them in the light of those principles. The presence of commercial motive is a primary legal requisite of trade. Looking at the facts in the instant appeal, the outstanding features are as follows:*

- i) The appellant is not a regular dealer in shares & it is not her regular source of income in any case;*
- ii) the subject- matter of transactions is shares in a private company which has been allocated coal blocks during the year under consideration and in which company appellant's husband holds post of Jt. CEO & is in fact involved with the said company since its inception;*
- iii) these shares (16786 out of 17886 shares sold) have been acquired through gift on 01.01.2005 & sold on 27.03.2006*
- iv) the said sale transaction has brought a sizeable profit;*
- v) the appellant, as circumstances show, clearly*

*anticipated the profit on these sale of shares.*

*5.1 After perusal of entire material an records and taking all these above mentioned facts into account, the cumulative effect of them, in my considered view, is that transaction of sale of shares cannot be said to be merely a conversion of one form of asset into another giving rise to capital gains. AO is held to be justified in concluding that profits have been made from a transaction which is an adventure in the nature of trade. Accordingly, AO's action in assessing appellant's business income at Rs. 26,62,900/- on sale of shares of M/s Shri Virangana Steel Ltd, is, hereby, confirmed.*

3. We have given our thoughtful consideration to vehement rival stands against and in support of this impugned addition. We find no merit in Revenue's arguments. This is on account of the fact that the assessee has nowhere been found to have indulged in any adventure in the nature of trade in share market transactions. All she has done to have received these shares by way of gift(s) from her father-in-law on 01.10.2005 followed by sale thereof in the value of March 2006. The CIT(A)'s detailed discussion has already been taken note of the foregoing clinching aspects in para 5.0 that neither this assessee is regular dealer in shares nor she derives any income from the very activity.

4. Learned DR at this stage vehemently argued that the assessee had derived exorbitant profits within a very short span of time. And that her husband has been found to be the Joint CEO of the company

herein Shri Virangana Steel Ltd. We are afraid that such facts are hardly relevant to decide to the assessee's nature of income derived from transfer of shares which has to be adjudicated as per the settled legal proposition applicable from time to time. The Revenue could not place any material or record that the assessee has been acting as regular trader in shares thereby earning business income in earlier or succeeding assessment years; as the case may be.

5. Faced with this situation, we accept the assessee's instant former substantive ground and direct the Assessing Officer to frame his consequential proceedings thereby treating this amount in issue as capital gain only.

6. The factual position is hardly different so far as the assessee's latter substantive ground seeking to reverse both the lower authorities again making notional rental income addition of Rs.1,26,000/- is concerned. We note from the perusal of the case file that the learned lower authorities could not even prove ownership of the concerned house property of the residential flat at Amar Builder, Mumbai since the Assessing Officer himself is fair enough in page 9 para 4 that there was only an agreement with the builder and no sale deed had been executed by the said date. We thus delete this impugned latter addition as well.

No other ground or arguments has been pressed before us.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 10<sup>th</sup> January, 2023.

**Sd/-**  
**(DR.DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> Jan, 2023/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,  
नागपुर / DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.