

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.8316/Del/2018  
निर्धारणवर्ष/Assessment Year:2012-13

DCIT Circle-11(1), New Delhi.	<u>बनाम</u> Vs.	Hero Investment Pvt. Ltd. (Now amalgamated into M/s Hero Motocorp Ltd.), G.T. Road, Hero Nagar, Ludhiana, Punjab.
		PAN No.AAACH4072N
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

Cross Objection No. 30/Del/2022  
(In I.T.A No.8316/Del/2018)  
निर्धारणवर्ष/Assessment Year: 2012-13

Hero Investment Pvt. Ltd. (Now amalgamated into M/s Hero Motocorp Ltd.), G.T. Road, Hero Nagar, Ludhiana, Punjab.	<u>बनाम</u> Vs.	DCIT Circle-11(1), New Delhi.
PAN No.AAACH4072N		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Krishna Kr. Mishra, Sr. DR
Assessee by	Shri Gaurav Jain, Advocate & Shri Sudhanshu Ray, Advocate

सुनवाईकीतारीख/ Date of hearing:	26.09.2023
उद्घोषणाकीतारीख/ Pronouncement on	13.10.2023

आदेश / O R D E R

PER C.M. GARG, J.M.

The appeal and cross objection were filed by the Revenue and assessee respectively against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Ludhiana dated 30.10.2018 for AY 2012-13. The grounds raised by the Revenue are as follows:

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in directing the AO to treat the income of the assessee from sale of shares/securities/PMS/Mutual Funds etc and income under the head "Capital Gains" instead of "Income from Business”*

*1.a) Whether the Ld CIT(A) was justified in ignoring the decision dated 04.2014 of jurisdictional High Court in ITA Nos. 93, 226 & 227 of 2012 in assessee's own case for AY 2007-08 wherein the Hon'ble High Court has held that income of the assessee from sale of shares/securities/mutual funds by the assessee is chargeable to tax as Business Income as sole activity of the assessee was to invest in shares/securities/mutual funds as regular course of business and to earn profits from such investment.*

*1.b) Whether the Ld CIT(A) has failed to appreciate that the issue involved in the instant year has been adjudicated in favor of Revenue by the Hon'ble High Court in ITA No. 226 of 2012 in assessee's own case and the said judgment has a binding effect on the appellate authorities below.*

*1.c) Whether the Ld CIT(A) has erred in relying on CBDT circular 6 of 2016 (dated 29.02.2016) in accepting the contention of the assessee that the income of the assessee is chargeable to tax under the Head "Capital Gains", not appreciating the fact that:*

*i) The Circular is meant to apply to situations where the assessee is holding dual portfolio i.e. shares held investment and shares held-as-stock in trade, and not to a situation where the sole business activity is investment in shares/securities etc and that the assessee has not shown any stock-in-trade in any of the years.*

*ii) The issue of characterization of income involved in the case has already been settled at the level of Hon'ble High Court in assessee's own case and therefore, the question of invoking the Circular does not arise.*

*2. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal."*

2. The Ld. Sr. DR supporting the action of the Assessing Officer (in short 'AO') submitted that the Ld.CIT(A) has erred in directing the AO to treat the income of the assessee from sale of shares/securities/PMS/mutual funds, etc. as income under the head "capital gains" instead of income from business. The Ld. Sr. DR submitted that the AO treated the income earned by the assessee on sale and purchase of shares/securities/PMS/mutual funds, etc. at business income as against exempt long term capital gain as treated by the assessee company. The Ld. Sr. DR

submitted that the Ld.CIT(A) has granted relief to the assessee without any valid reason, therefore, the impugned first appellate order may kindly be set aside by restoring that of the AO. The Ld. Sr. DR also submitted that the identical issue has been decided in favour of the Revenue by the Hon'ble Jurisdictional High Court of Punjab & Haryana in the Revenue appeal ITA No.226/2012 in assessee's own case. He further submitted that the Hon'ble Jurisdictional High Court has allowed appeals of Revenue reversing the conclusion drawn by the Ld.CIT(A) and the Tribunal held that the impugned income has to be treated as business income.

3. Replying to the above noted contentions of Ld. Sr. DR and supporting the first appellate order the Ld. Counsel for the assessee submitted that in the case before the Hon'ble Punjab & Haryana High Court the issue was regarding income from dealing in mutual funds but in the present case the issue involve is income accrued from sale of shares which were held by the assessee as investment and also shown as investments in the Books of Accounts and Balance sheet as on 31.03.2012. Further drawing our attention towards para 26 & 27 of the Judgment of Hon'ble High Court of Punjab & Haryana the Ld. Counsel submitted that the Hon'ble High Court had decided the issue of income on sale of

Tata Mutual Funds (Dividend Plan) as business income but in the present case from the submissions of assessee noted by the Ld.CIT(A) in para 6.1 reveals that the impugned income was accrued to the assessee out of sale of investment in shares, which the assessee was holding for a period of thousand days i.e. maximum upto 3301 days.

3.1 Therefore, the Ld. Counsel submitted that the facts in the Judgment of Hon'ble High Court of Punjab & Haryana (supra) are distinct and dissimilar to the facts of the present case, therefore, the same cannot be applied to the present case blindly. He submitted that the Ld.CIT(A) has granted relief to the assessee after considering the entire factual position emerging from Balance Sheet of assessee and CBDT Circular No.6 dated 29.02.2016. Therefore, first appellate order was kindly be uphold dismissing the appeal of Revenue.

4. On careful consideration of submissions from the judgment of Hon'ble Punjab & Haryana High Court in three appeals (supra) including ITA No.226/2012 pertaining to present assessee the identical issue under identical circumstances has been decided in favour of the Revenue and against the assessee with following observations and findings: -

*“26. Merely because deposits in mutual funds are not traded in the nature of sale and purchase of equity shares and such transactions are different in effect and consequences have no ground to treat those differently. Frequency of dealings in deposits of mutual funds with the strategy of firstly investing in tenurial plans and then getting redemption within the same year of deposit and at times resulting in huge profits while at other times in loss, has been usual business activity of the assessee. Such before term redemption, is done in the usual course of business by the assessee clearly to increase its actual cash inflow to tide over its commitments made in the market and at times to earn higher interest in other lucrative investment plans contemporaneously emerging in the market. In this case, in the name of consistency the assessee had tried to hoodwink the authorities. Rather previous conduct of the assessee reveals that the accounts had been manipulated by the assessee to treat the investment as a capital asset only as a camouflage and smoke screen. It is a case where intention as also principle of consistency sought to be used by the assessee in its favour rather goes against it as year after year the same manipulation strategy and maneuverability had been adopted to hoodwink the revenue.*

*27. In view of the discussion made earlier, by now, it is abundantly clear that the CIT(A) as also the ITAT were wrong in adjudicating the income on sale of Tata Mutual Funds (Dividend Plan) as income from 'short term capital gains' merely on the ground that the units of mutual funds were not freely tradable and thus, such investment was in non-tradeable commodity. In fact, in the present case, it has been amply proved that the business of the assessee is to make profits by virtue of investments in shares and securities etc. Merely because there is single transaction or that such investment was in not freely tradeable commodity, does not change the profit intent of the assessee who is in the business of investments only. Therefore, the investment made by the assessee was rightly treated as stock-in-trade and revenue generated to the tune of Rs.1,24,70,700/- was correctly assessed as business income by the AO.*

*Rightly, no adjustment for the balance forward on account of short term capital loss of assessment year 2004-05 to the tune of Rs. 1,93,776/- and for the assessment year 2005-06 to the tune of Rs.2,49,934/-, had been allowed by him.*

*28. So far as ITA Nos.226 and 227 of 2012 are concerned, unlike case of ITA No.39 of 2012, activities of the assessee in these appeals are so frequent and regular in their operation and in the usual course of business activity of the assesseees that no case for treating the impugned income as resulting from transactions labelled as 'tenurial investments', is made out."*

5. From para 6.1 of first appellate order we note that before Ld.CIT(A) the assessee submitted detailed factual explanation and submissions on 18.05.2015, 25.02.2015 and 02.09.2015, which are as follows: -

*"6.1 In support of grounds No. 2 and 2(b) of appeal, the assessee company through its learned AR has filed written submissions vide letters dated 18.05.2015, 25J08.2015 and 02.09.2015, the relevant paras of which read as under:-*

*Written submissions dated 18.05.2015  
Ground No. 1 - That the Ld. Assistant Commissioner of Income Tax, Circle V has wrongly computed and assessed total income at Rs.9,62,94,015/- against the returned income at Rs.5,62,94,011/-.*

1. The assessee company is a regular income tax assessee & is being subject to tax since long.

2. The assessment in this case has been framed by the ACIT vide order dated 2.3.2015.
3. The assessee company has filed the return showing a total income of Rs.56294011/- and the case was selected for scrutiny.
4. The return filed showed the following income:-

<i>Particulars</i>		<i>Amount (Rs.)</i>
<i>Interest on deposits with bank</i>		55528621
<i>Interest on income tax refund</i>		765390
<i>Dividend income (exempt)</i>	9370812964	
<i>Long Term Capital Loss</i>	(635853685)	
<b><i>Total</i></b>		<b>56294011</b>

5. The Ld. AO assessed the total income vide his order dated 2/3/2015 as under: -

<i>Particulars</i>	<i>Amount</i>
<i>Business Income</i>	40000004
<i>Income From Other Sources</i>	56294011
<b><i>Total</i></b>	<b>96294015</b>

6. The Capital Loss of Rs. 635853685/- was assessed by him as "Business Income" and accordingly the gain on sale of investment was recomputed (without indexation) at Rs.40000004/- and treated as "Business Income".

**Ground No. 2 - That the Ld. ACIT has wrongly computed the business Income at Rs. 4,00,00,004/- arising out of Loans Term Capital Loss shown by the assessee company at Rs. 63,58,53,685/-.**

**2(b) That the Ld. ACIT has wrongly calculated, by applying the provisions of section 14A, even by treating the assessee as a "Trader" of shares and treated the gain as "Business Income."**

1. The assessee company had made the investment mainly in the group companies with the basic object of the company is to promote the group companies and to provide financial assistance to existing group companies by way of equity/preference participation and/or loans, whenever it is required as per past history of the company.
2. All the investments have been shown as an "investment" in the balance sheet, which is duly audited and filed with the office of Registrar of the Companies as well as Reserve Bank of India.
3. The assessee company is not having any investment in the equity shares of other than group companies as on 31/3/2012.
4. It is a settled law that the company can have the dual portfolio of investment i.e. as investment as well as stock-in-trade. The investment always depends upon the "intention" and for the "purpose" for making the investment.
5. Reference may kindly be made to the Circular issued by CBDT for distinction between the "business income" and "capital gain". The assessee company clearly falls under the head "capital gain". The Ld. AO has not followed the Circular of CBDT which is binding in nature.
6. Nothing has been brought on record to show that the assessee company has converted capital investment into stock-in-trade.

7. *There is no day to day transaction of sale & purchase of investments/mutual funds nor any intra day transactions have been made.*
8. *These investments has always been shown as investment and valued at cost as per AS-13.*
9. *Prior to AY 2006-07, it has always been accepted as investment.*
10. *The Hon'ble High Court in the earlier years has treated the profit on sale of mutual fund as 'Business Income'.*
11. *The issue before the Hon'ble High Court in AY 2006-07 in assessee's own case is as under:*

*"Whether on the facts and in law, the Hon'ble ITAT was legally justified in upholding the decision of CIT(A)-II, Ludhiana and in holding that the income on sale of **Tata Mutual Funds (dividend plan)** are assessable as income from Short Term Capital Gain inter-alia on the ground that the units of mutual funds are not tradable and that therefore the assessee had made investment in non tradable commodity."*

12. *The Hon'ble Supreme Court has repeatedly held that a finding of facts given by the Hon'ble ITAT can be interfered by the Hon'ble High Court in appeal u/s 260A of I.T. Act, 1961, only if, **firstly, a specific question of law is raised**, attacking the finding of the Tribunal on the ground of perversity and **secondly** establishing the existence of such perversity. Reference by made in the case of Ravindranathan Nair Vs. CIT, 247 ITR 178.*

*The revenue did not raise any such question of law, challenging the finding of fact of Tribunal on the ground of perversity.*

*The impugned judgment of the Hon'ble High Court has disregarded the finding of fact of Ld.CIT(A) and the Tribunal and held that the said investments are held by the petitioner as stock-in-trade and profit on sale of investment were business profit and not capital gain. The Hon'ble High Court was of the view that the petitioner is a dealer of shares and securities and*

*in mutual fund etc. which was the business activity to earn profit. The assessee company had challenged the judgment of Hon'ble High Court and assessee's application has been admitted.*

13. *The assessee company holding the investment in group concerns for a long time of period.*
14. *Most of the investments sold during the year were held for a minimum period of 319 days and maximum period of 3301 days. This shows that the investments have not been made for earning profits instead these investments in group companies were made with the purpose of promoting them. The detail showing the period of holding is as under:*

<i>Investments</i>	<i>Purchase date</i>	<i>Sale Date</i>	<i>No. of days</i>	<i>LTCG/LTCL</i>
<i>Munjal Acme Packaging Systems (P) Ltd</i>	<i>4/1/2003</i>	<i>13/4/2011</i>	<i>2290</i>	<i>222952</i>
<i>Munjal Acme Packaging Systems (P) Ltd</i>	<i>31/3/2007</i>	<i>13/4/2011</i>	<i>1474</i>	<i>64066</i>
<i>Munjal Acme Packaging Systems (P) Ltd</i>	<i>1999-2000</i>	<i>13/4/2011</i>	<i>1474</i>	<i>127249</i>
<i>Hero Corporate Service Ltd</i>	<i>1/3/2007</i>	<i>3/4/2011</i>	<i>1474</i>	<i>262499568</i>
<i>Hero Corporate Service Ltd</i>	<i>5/9/2006</i>	<i>3/4/2011</i>	<i>1661</i>	<i>1893912</i>
<i>Hero Corporate Service Ltd</i>	<i>0/3/2002</i>	<i>3/4/2011</i>	<i>3301</i>	<i>3864831</i>
<i>Hero Corporate Service Ltd</i>	<i>7/3/2004</i>	<i>3/4/2011</i>	<i>2583</i>	<i>34995358</i>
<i>Hero Management Service Ltd</i>	<i>0/3/2002</i>	<i>3/4/2011</i>	<i>3301</i>	<i>11604779</i>
<i>Hero Management Service Ltd</i>	<i>7/3/2004</i>	<i>3/4/2011</i>	<i>2583</i>	<i>78023218</i>
<i>Hero Management Service Ltd</i>	<i>001-02</i>	<i>3/4/2011</i>	<i>2583</i>	<i>71672535</i>
<i>Hero Management Service Ltd</i>	<i>002-03</i>	<i>3/4/2011</i>	<i>2583</i>	<i>128022931</i>

<i>Hero Management Service Ltd</i>		5/9/2006	3/4/2011	1661	16646857
<i>Easy Bills Ltd</i>		9/5/2010	3/4/2011	319	0
<i>Easy Bills Ltd</i>		1/3/2005	3/4/2011	2204	3177083
<i>Easy Bills Ltd</i>		0/2/2005	3/4/2011	2243	3177083
<i>Easy Bills Ltd</i>		3/10/2004	3/4/2011	2363	6354167
<i>Easy Bills Ltd</i>		2/12/2003	3/4/2011	2669	3477322
<i>Easy Bills Ltd</i>		1/12/2002	3/4/2011	3035	7561521
<i>Rockman Industries Ltd</i>		1/7/2007	3/4/2011	1352	2468240
<b>Total</b>					(-) <b>635853685</b>

It is prayed that the capital loss may kindly be treated under the head "Capital Gain" instead of "Business Income". All the above shares were sold for repayment of loans.

### Alternatively

That the Ld. ACIT has wrongly failed to allow the expenses debited to profit and loss account while treating the Long Term Capital Gain as "Business Income"

1. During the year, the assessee has incurred an expenditure of Rs.782520175/- as follows:

<i>Particulars</i>		<i>Amount (₹)</i>
<u><i>Employee benefit expenses</i></u>		
<i>Salary &amp; Wages</i>	3029099	
<i>Gratuity</i>	9031	

Leave Encashment	44206	3082336
<b><u>Finance Costs</u></b>		
Interest paid on non-convertible debentures	554161098	.
Interest paid on term loan	189163067	
Prepayment charges on term loan	7375000	
Debt issue expenses	7950450	758649615
<b><u>Other expenses</u></b>		
Legal & professional charges	19260454	
Insurance expenses	317338	
Rates & Taxes	8130	
Rent	132360	
Audit Fees	337080	
Tax Audit Fees	56180	
Other services	329299	
Miscellaneous	347383	20788224
<b>Total</b>		<b>782520175</b>

The detail of these expenses are enclosed.

2. The assessee company had not claimed these expenses in the computation of taxable income, as the revenue earned from investments were shown under the head 'Capital Gain'. The assessee company still maintains to treat the profit under the head "Capital Gain". In case, though not conceding the profit is held by your honour as "Business Income" by following the Hon'ble High Court decision, the expenses may be allowed.
3. As already submitted by the assessee during the assessment proceedings, the finance cost of

Rs.758649615/- have been incurred for the purpose of purchase of shares of Hero MotoCorp.

4. If it is held that "Capital Gain" shown by the company is "Business Income" then the expenditure incurred may be allowed. Reference be made to the order of Hon'ble ITAT Chandigarh Bench in the case of **ACIT Vs. Gaurav Munjal** in ITA No.740/2012 dated 31.10.2012 for AY 2008-09 where a disallowance of Rs.5000/- was restricted out of total expenditure of Rs.1279001/- i.e. 0.03%.

**Ground No.3 That the Ld.ACIT has wrongly calculated and determined the disallowance u/s 14A at Rs.95,26,10,119/-.**

1. The Ld. AO has calculated and determined the disallowance of Rs.952610119/- u/s 14A by applying Rule 8D in case the income of assessee is continuing to be treated under the head "Capital Gains", no disallowance u/s 14A is called for, as the assessee has not claimed any expenditure in the return.
2. However in case the profit on sale of investment is treated as "Business Income" and the expenditure of Rs.782520175/- debited in the P&L Account is allowed. It is prayed that the disallowance u/s 14A may be calculated proportionately, since the investments held by the assessee would yield both exempt and non exempt income.
3. Moreover other than the finance cost of Rs.75.86 crores, the other expenses have not been incurred directly in relation to the investment income and accordingly, should not be disallowed.

**Written submissions dated 25.08.2015**

In continuation of my Appeal Notes filed on 18/5/2015, it is further submitted in respect of Ground No.2 as under:

*The assessee company has shown the income in the computation of taxable income as under:*

<i>Particulars</i>	<i>Amount</i>
<i>Business Income</i>	<i>Nil</i>
<i>Capital Loss</i>	<i>670222603</i>
<i>Income From Other Sources</i>	<i>56294011</i>

*Copy of computation of taxable income is enclosed.*

*The total cost of the investment, (sold during the year) was Rs.840193547/- which has been sold for Rs.672811164/-. Thus, there is a total loss of Rs.167382383/-. The Ld. AO had considered the profit at Rs.4000004/-.*

*In AY 2007-08, the assessee company had made a "Provision of diminution in value of shares" as per requirement of Companies Act, at Rs.207382387/-. This amount was neither claimed nor allowed while determining the total income. Even at the appellate stages, it has not been claimed or allowed as on today.*

*The following documents are enclosed:*

- (i) Copy of Balance of AY 2007-08*
- (ii) Copy of Computation of Taxable Income of AY 2012-13*
- (iii) Copy of Acknowledgement of AY 2012-13*
- (iv) Copy of Assessment Order of AY 2007-08.*
- (v) Copy of Order of CIT(A) of AY 2007-08*
- (vi) Copy of Order of ITAT of AY 2007-08*

*The Ld. AO while framing the assessment has considered the profit at Rs.40000004/- instead of determining the loss at Rs.167382883/-. A calculation of Capital Gain, investment wise, is enclosed.*

*In view of the above, it is therefore prayed the correct figure of loss of Rs.167382883/- be directed to be considered instead of profit of Rs.40000004/-*

**Written submissions dated 02.09.2017**

*In continuation of my previous Appeal Notes where the assessee company had filed all the documents relating to AY 2007-08 vide letter dated 22/8/2015.*

*In AY 2007-08, the company had made provision of diminution in value of shares as per requirement of Companies Act at Rs.20,73,82,387/-. This amount was debited to Profit & Loss Account & accordingly the cost of shares were reduced.*

*The company had not claimed nor allowed the diminution in the value of shares as expenditure in AY 2007-08.*

*The provisions of Section 43 of Income Tax Act read as under:*

*“In sections 28 to 41 and in this section, unless the context otherwise requires-*

- (l) “actual cost” means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly be any other person or authority.”*

*Since in this case, no portion of actual cost of shares has been met directly or indirectly by any other person or authority, therefore, the provisions made for diminution in value of shares will not be reduced from the “actual cost” for the purpose of determination of business profit as mentioned in section 43 of Income Tax Act.*

*A chart showing the calculation of profit/loss on sale of shares without considering the diminution in value of shares for computing the income under the head “Business Income” is enclosed.*

*It is, therefore, prayed that the loss on sale of shares without reducing the diminution in value is as per chart enclosed herewith, may be allowed.”*

6. From the relevant operative part of first appellate order we further note that the Ld.CIT(A) has granted relief to the assessee with following observations and findings:

*“6.2 The written submissions filed by the assessee company through its learned AR vide letter dated 18.05.2015 were forwarded to the Assessing Officer for his comments/report. However, the Assessing Officer has not submitted the report till date. As the issue is same as that of earlier assessment year i.e. A.Y. 2011-12, the appeal is being decided without even waiting for the remand report from the Assessing Officer.*

*6.3 I have considered the observations of the Assessing Officer as made by him in the assessment order while treating income from purchase & sale of investments as business income. I have also considered written submissions filed by the assessee company through its learned AR vide letter dated 30.01.2015 in connection with the issue under reference. I have further considered various judicial pronouncements relied upon by the learned AR of the assessee company as well as other material placed by him on record. I have again considered the contents of Circular No. 6/2016 dated 29.02.2016 issued by the CBDT, the operation of which in the opinion of the learned AR of the assessee is nature. On careful consideration of the rival contentions, it has been issued under reference is squarely covered by Circular No. 6/2016 dated 29.02.2016 issued by the CBDT, New Delhi as the assessee company had always treated shares/securities/PMS/mutual funds as an investment in its books of account and not as stock-in-trade. I am also of the opinion that as Circular No. 6/2016 dated 29.02.2016 has been issued by tie CBDT, New Delhi to reduce litigation and uniformity of approach, it should have retrospective effect. As per this Circular, the income from the sale and purchase of shares is to be treated as long/short term capital gain as the assessee*

*company has shown investment in shares/securities, which have been purchased & sold, in its balance sheet as investment and not as stock in trade. I am also of the opinion that the operation of this circular should be retrospective otherwise the purpose for issuing this circular will be defeated. Under such circumstances and keeping in view the guidelines issued by the CBDT vide Circular No. 6 dated 29.02.2016, the action of the Assessing Officer in treating income from the sale and purchase of shares/securities/PMS/mutual funds etc. as business income instead of long term capital gains is negated. The Assessing Officer is, therefore, directed to treat the income from sale and purchase of shares/securities/PMS/Mutual Funds etc. as income of the assessee company under the head "Capital Gains". In the result, the grounds NO.2 and 2(b) of appeal taken by the assessee company is allowed.*

*6.4 The alternative ground taken by the assessee is rejected as the same has become infructuous in view of the fact that the income from sale and purchase of shares/mutual funds/PMS etc. has been directed to be treated as long/short term capital gains.*

*7. As the income from the purchase and sale of shares/securities has been directed to be treated as income under the head 'capital gains', the ground 3 of appeal taken by the assessee company have become infructuous. Accordingly, the ground No. 3 of appeal taken by the assessee company is dismissed.*

*8. The ground No. 4 of appeal taken by the assessee company is general in nature and do not require any adjudication separately.*

*9. As a result, the appeal filed by the assessee company is partly allowed."*

7. On careful consideration of above noted rival submissions, basis taken by the AO for treating income from sale of shares as business income and reasoning arrived by the Ld.CIT(A) for

treating the impugned income as “capital gains” along with paras 26 to 28 of Judgment of Hon’ble High Court of Punjab & Haryana, fir of all, we note that in the case before Hon’ble High Court the issue was pertaining to treatment of income on sale of Tata Mutual Funds (Dividend Plan) whereas from the factual submissions in the present appeal before the Ld.CIT(A) (supra) by the assessee clearly show that the issue involve pertains to income accrued to assessee on sale of shares of various companies which were held for a long period maximum 3301 days and minimum 1352 days. Therefore, after giving thoughtful consideration to the factual matrix of both the case we respectfully hold that the factual position of present case is suite distinct and dissimilar. Therefore, benefit of said judgment of Hon’ble High Court is not available for the Revenue in the present case.

8. On the other hand, from the operative paras of the order of Ld.CIT(A) (supra) we note that the Ld.CIT(A) after considering the basis taken by the AO and factual position submitted by the assessee rightly drawn a logical conclusion based on CBDT Circular No.6 dated 29.02.2016 that since the assessee was shown shares in the balance sheet as investments and not as stock in trade and he also took cognizance of the fact stated by the assessee that the

assessee held the shares sold for a long period ranging from 3301 days to 1352 days. The Ld.CIT(A) by retrospectively applying the CBDT Circular No.6 (supra) rightly held that the action of the AO treating the income as “business income” instead of “long term capital gain” is not correct thus, he negated the same. In view of above, we are unable to see any valid reason to interfere with the findings arrived by the Ld.CIT(A) hence, we uphold the same. The Ld. Counsel of assessee submitted that the assessee does not want to press Cross Objections, hence, the same are also dismissed as not pressed. Accordingly, grounds of Revenue are dismissed.

9. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on 13.10.2023

Sd/-  
(Dr. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER

Dated: 13.10.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**