

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2636/Mum/2023  
(A.Y. 2016-17)**

JPR Investments and Trading Private Limited, 210, Shree Naman Plaza, S.V. Road, Kandivali West Mumbai – 400067	Vs.	Asstt. Commissioner of Income Tax, Circle 12(3)(1), Aayakar Bhavan, M.K. Road, New Marine Lines Maharashtra – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABCJ0559R		
Appellant	..	Respondent

Appellant by :	Rajesh S. Athavale
Respondent by :	Ujjwal Kumar

Date of Hearing	09.01.2024
Date of Pronouncement	24.01.2024

आदेश / ORDER

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 31.05.2023 for A.Y. 2016-17. The assessee has raised the following grounds before us:

- “1. *The learned CIT(A) erred in confirming the action of the Assessing Officer (AO) in treating the income of INR 5,05,38,690 realised on sale of securities as business income against the short term capital gains as declared by the appellant in its return of income. The learned CIT(A) erred not directing the AO to apply the principle of consistency in the matter.*
2. *The learned CIT(A) erred in observing that the motive was to take loan and earn profit in a short span of time and reducing tax liability by claiming heavy interest expenses.*
3. *The learned CIT(A) erred in confirming the action of the AO in disallowing the claim for short term capital loss of INR 10,68,778, which was set off*

*by the appellant against the short term capital gains declared in the return of income.*

4. *The learned CIT(A) erred in confirming the levy of interest under Sections 234A and 234B of the Income tax Act.*
5. *Each one of the above grounds of appeal is without prejudice to the above.*
6. *The appellant reserves the right to add, alter or amend to the above grounds of appeal.”*

2. Fact in brief is that return of income declaring total income at Rs.643,61,520/- was filed on 17.10.2010. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 20.07.2017. During the course of assessment from the detail filed by the assessee the assessing officer noticed that assessee had obtained loan from M/s Manhar Resorts Ltd. of Rs.23.25 crores on various dates out of which Rs. 22 crores was obtained on 23.06.2015 and 01.07.2015 and the same was utilised for purchasing of Rs. 40 lacs shares of India Bulls Real Estate Ltd. at Rs.21,93,96,601/- @ Rs.54.985 per shares in June & July 2015. The AO further noticed that the aforesaid shares were sold in the month of October 2015 for Rs.26,99,35,292/- @ Rs.67.48 per share resulted in gain of Rs.5,05,38,690.48. The assessee has utilised the aforesaid amount of sale consideration for repayment of loan amount of Rs.23.25 crores obtained by it from M/s Manhar Resources Ltd. which was invested in the aforesaid shares. The AO noticed that assessee had shown the above referred gain from the sale of shares as income under the head short Term Capital Gain. The AO show caused the assessee to explain why not the said activity should be considered in the nature of “Adventure in the nature of trade” as the assessee had utilised the borrowed funds for purchasing of the shares. The assessee has not made any submission, therefore, the AO has treated the said gain from the sale and purchase of the shares to the amount of Rs.505, 38,690/- in the nature of business income.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has confirmed the action of the assessing officer in holding the income as business income, and the appeal of the assessee was dismissed.

4. During the course of appellate proceeding before us the ld. Counsel submitted that assessee has purchased the shares and hold it as investment, therefore, the gain made on sale of shares is rightly shown by the assessee as short term capital gain on the sale of said shares. In support of his contention the ld. counsel has filed the paper book comprising copy of demat account, copy of bank statement and other details filed before the lower authorities. The ld. Counsel also contended that assessee has not done any trading in shares during the year under consideration. The ld. Counsel has also referred CBDT Circular No. 4/2007 dated 15.06.2007 & Circular No. 6/2016 dated 29.02.2016.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The assessee obtained loan from M/s Mahnar Resorts Ltd. of Rs.23.25 crore of which Rs.22 crore was obtained on 23.06.2015 and 01.07.2015 and utilized for purchase of Rs.40 lakh shares of India Bulls Real Estate Ltd. at Rs.21,93,96,601/- @ Rs.54.85/- share in June and July 2015. These were sold at Rs.67.48/share at Rs.26,99,35,292/- resulting in gain of Rs.5.05 crore in October 2015 and repaid the loan in same month. The assessee has recorded the purchase of shares of India Bulls Real Estate as investment in the books of account as per Schedule 7 of such investment placed at page no. 9 of the paper book. We have further perused the copy of computation of income wherein the assessee has shown the gain arised on the sale of the aforesaid shares under the head short term capital gain to the amount of Rs.503, 54,429/-. We find that

the lower authorities has not brought any material on record to contrary prove that the assessee has made trading in the shares of India Bull Real Estate as against claim of the assessee that it has made short investment in the impugned shares. The assessee has also submitted before the Id. CIT(A) that similar nature of transaction in the earlier years in the case of the assessee were assessed under the head short capital gain. In the background of the aforesaid facts and circumstances we find that assessee has debited interest charges of Rs.122,26,476/- to the profit and loss account incurred on the above mentioned loan amount which was invested in purchasing shares of India Bull and not for the purpose of business. We consider that assessee cannot claim the aforesaid interest cost as business expenditure since the borrowed amount was utilized for the purpose of making investment in the impugned shares and the assessee itself had shown the income earned from the sale of said shares as short term capital gain by treating the same as investment in its books of accounts. Therefore, we direct the assessing officer to treat the interest cost of Rs.122,26,476/- as cost of investment made towards purchasing the shares of M/s India Bull Real Estate Ltd. and re-compute the short term capital gain and no deduction of these interest expenses to be allowed out of the business income. Therefore, ground no. 1 & 2 are partly allowed.

**Ground No. 3: Disallowing the claim of short term capital loss of Rs.10,68,778/-:**

6. Since we have adjudicated that interest expenditure cannot be allowed as business expenditure since income on the sale of shares is held as short term capital gain, therefore, we direct the assessing officer to consider the claim of set-off of short term capital loss of Rs.10,08,778/- claimed by the assessee as per law. Therefore, both these grounds of appeal are allowed for statistical purposes.

**Ground No. 4: Levy of interest u/s 234A & 234B:**

7. The interest u/s 234A & 234B is to be levied mandatory as per the provision of law, therefore, we don't find any merit in this ground of appeal and the same stand dismissed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 24.01.2023

Sd/-  
(Narendra Kumar Choudhary)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 24.01.2024

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.