

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 948/Kol/2023**  
**Assessment Year: 2015-16**

<b>Harshad Mansukhlal Shah</b> 1208, C2 Wing Sheetal Nath Gordia Nagar, Kurla Mumbai - 700077 <b>[PAN : ALOPS0164Q]</b>	Vs	<b>ACIT, Circle-29, Kolkata</b>
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Manish Tiwari, FCA
Revenue by :	Shri Swapan Kumar Bera, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 17/04/2024  
घोषणा की तारीख /Date of Pronouncement: 08/05/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "ld. CIT(A)") dt. 10/12/2021, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16.

2. The appeal is time barred by 577 days. On the last date of hearing i.e., 21/03/2024, the Bench after considering the condonation application and other facts and circumstances of the case has condoned the delay in filing of the instant appeal vide its order dt. 21/03/2024, which forms part of the record. Thus, we proceed to adjudicate the appeal on merits.

3. The assessee has raised the following grounds of appeal:-

*"That on the facts and in the circumstances of the case, the Ld. CIT(A) is erred in accepting the view of the AO that the disclosed short-term capital gain of Rs. 18,67,181/- as business income of Rs. 18,67,181/-.*

*That on the facts and in the circumstances of the case, the Ld. CIT(A) is erred in accepting erroneous action of AO by charging tax @ 30% on Rs. 18,67,181/- instead of tax @ 15% on Rs. 18,67,181/-.*

*That on the facts and in the circumstances of the case, the appellate order passed by the Ld. CIT (A) is erroneous as because it treated the investment in shares & securities as regular purchase and sale of shares i.e. trading in shares.*

*That the appellant craves the leave to make any addition, alteration modification of the grounds either before the appellate proceedings or in course of appellate proceedings."*

4. Facts in brief are that the assessee is a senior citizen earning income from short terms capital gain, F&O transactions etc.. Return of income for Assessment Year 2015-16 furnished on 17/08/2015 declaring income of Rs.37,30,090/-. After the case being selected for scrutiny through CASS, the Id. Assessing Officer carried out the assessment proceedings. The issue relevant to the grounds raised in the instant appeal is only with regard to the claim of the assessee of having earned short term capital gains of Rs.18,67,181/-. The Id. Assessing Officer after going through the details of the alleged short term capital gain, came to a conclusion that frequent transactions have been carried out during the year and the nature of such activity of purchase and sale of shares on which the assessee had paid taxes @15% applicable to short term capital gains from sale of equity shares of listed companies, falls under the category of business and, therefore, the alleged transactions is liable to be taxed at normal rate of taxes applicable for business income.

4.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed as the Id. CIT(A) confirmed the finding of the Id. Assessing Officer of treating the alleged gain as business income.

5. Now, the assessee is in appeal before this Tribunal.

6. The Id. Counsel for the assessee, submitted that the assessee is carrying out business of F&O and derivatives and duly offering it to tax as business income. The assessee also maintains separate account of share investment and the gain from purchase and sale of such equity shares are offered to tax as short term capital gain/long term capital gain as per the period of holding. He submitted that for the preceding financial year 2014-15, the assessee's case was scrutinised u/s 143(3) of the Act and vide order dt. 27/10/2016, the assessment has been framed accepting the assessee's income from short term capital gain liable to be taxed @15% u/s 112 of the Act. He also submitted that the assessee has not borrowed any funds for carrying out any such activity.

Per contra, the Id. D/R vehemently argued supporting the orders of the lower authorities and stated that huge volume of share transactions have been carried out during the year. Referring to page 2 of the paper book he submitted that the assessee has dealt in almost 55 scrips and huge quantity of purchase and sale of equity shares have been carried out which clearly indicates that they are in the nature of business activity.

7. We have heard rival contentions and perused the material placed before us. The only dispute is in respect of the tax rate applicable to the gain from purchase and sale of equity shares of listed companies. The assessee has earned net gain of Rs.18,67,181/- from purchase and sale of equity shares. He has disclosed it as short term capital gain taxable u/s 112 of the Act @15%. The Id. Assessing Officer has not disputed the amount of gain but has only held that the transactions of purchase and sale of equity shares during the year in the nature of business and not

short term capital gain and thus liable to be taxed at normal tax rate. We have gone through the group-wise sale and also income and expenditure and balance sheet. We observe that the assessee has carried out the activity of F&O and derivative trading and has earned Rs.16,98,213/- during the year. The F&O profit has been offered to tax as business income. Apart from the F&O, the other credits in the income and expenditure account only includes the income from bank interest and short term capital gain.

7.1. Now, so far as the short term capital gain is concerned, the same is related to purchase and sale of equity shares of listed companies which are held for not more than 12 months. The assessee has shown share investment account in the balance sheet separately and as stated by the Id. Counsel for the assessee, separate D-Mat account is maintained. It is also claimed that the assessee is consistently showing the gain/loss from sale of equity shares on delivery basis as capital gain falling under the category of short term capital gain/long term capital gain as per the period of holding. We also observe that in the immediately preceding Assessment Year, the assessee has earned short term capital gain from equity shares of listed companies at Rs. 13,87,841/- and the same has been accepted by the Id. Assessing Officer. It is also an admitted fact that similar to the instant year in appeal in the preceding Assessment Year also, the assessee has shown income from F&O profit as well as short term capital gain and the same was accepted by the Revenue Authorities. It is also observed that the assessee has not borrowed any funds for carrying out the activity of purchase and sale of equity shares.

8. Under these given facts and circumstances, where the assessee is found to be consistently showing income from short term capital gain and offering it to tax u/s 112 of the Act and the revenue authorities have also accepted the claim of the assessee for the preceding years, there being a separate D-Mat account and no borrowed funds have been utilized and also considering the fact that F&O transactions have been accounted as business income, we find merit in the contention of the Id. Counsel for the assessee and are inclined to hold that the profit of Rs. 18,67,181/- from purchase and sale of equity shares of listed companies fall under the category of short term capital gain and has been rightly offered to tax @15% u/s 112 of the Act. Accordingly, finding of the Id. CIT(A) is set aside and the effective Ground Nos. 1, 2 & 3 raised by the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 8<sup>th</sup> May, 2024 at Kolkata.

*Sd/-*

(PRADIP KUMAR CHOUBEY)  
JUDICIAL MEMBER

*Sd/-*

(DR. MANISH BORAD)  
ACCOUNTANT MEMBER

Kolkata, Dated 08/05/2024

*\*Sd/-*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata