

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.3632/Del/2023, A.Y. 2017-18**

Deputy Commissioner of Income Tax, Room No. 1405, 14 <sup>th</sup> Floor,E-2 Block, Civic Centre,New Delhi <b>(Appellant)</b>	Vs.	Shri Finance, 4, SCINDIA House, Connaught Place, New Delhi PAN: <b>AACFS9120K</b> <b>(Respondent)</b>
Appellant by	Shri Naveen Kumar, Advocate	
Respondent by	Mrs. Maninder Kaur, Sr. DR Shri Om Parkash, Sr.DR	
Date of Hearing	10/01/2025	
Date of Pronouncement	09/04/2025	

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

The appeal of the Revenue for the Assessment Year (hereinafter, the 'AY') 2017-18 is directed against the order dated 13.09.2023 of the Commissioner of Income Tax (Appeals), NFAC, New Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds have been raised by the Revenue: -

*"1. Whether CIT (A) is correct in facts and law to treatment of taking LTCG on equity shares amounting to Rs.7,74,38,600/- claimed as exempt w/s 10(38) of the IT Act, 1961 LTCG (non STT paid) of Rs.5,28,121/- & STCG of Rs.83,12,672/- as to units of debt oriented mutual funds aggregating to Rs.8,62,99,450/- ignoring*

- a) *That assessee was engaged in the business of trading in shares and it was the sole activity of the assessee which is also an admitted object of assessee firm as per partnership deed.*
- b) *That assessee has undertaken frequent and voluminous shares transaction.*
- c) *Various other findings and observations as discussed in the assessment.*

2 *The appellant reserves right to add, amend or alter the grounds of appeal on or, before the date of disposal of appeal.”*

3. The relevant facts giving rise to this appeal are that the appellant assessee, a partnership firm, derives income from purchase and sale of shares, securities, mutual fund, derivatives, etc., filed its Income Tax Return (hereinafter, the 'ITR') on 31.10.2017 declaring income of Rs.4,10,49,610/-. The case was selected for scrutiny. Besides, the assessee has also declared exempted Long Term Capital Gains (hereinafter, the 'LTCG') of Rs.7,74,38,060/- on sale of shares under section 10(38) of the Income Tax Act, 1961 (hereinafter, the 'Act') and Short Term Capital Gains (hereinafter, the 'STCG') of Rs.83,12,672/- on sale of debt oriented mutual fund. The Assessing officer (hereinafter, the 'AO') treated LTCG and STCG as business income along with the declared income of Rs.4,10,49,610/-. Aggrieved, the assessee filed appeal before the CIT(A), who allowed the appeal holding as under: -

*“4.1 The appellant had filed its return of income for the AY 2017-18 on 31.10.2017 by claiming the LTCG of Rs.7,74,38,060/- as exempt u/s 10(38) on account of sale of equity shares. The total income of Rs.4,10,49,610/- declared by the appellant comprises of STCG of Rs.2,91,47,338/-, dividend income as income from other source of Rs.1,24,51,685/- and income from speculation business of Rs.32,353/-. As per the computation of income, the appellant declared loss under the*

*head business or profession of Rs.5,81,767/-. The copy of P & L account and computation of income submitted by the appellant is scanned and reproduced below:*

.....  
.....

*4.2 During the course of the appellate proceedings, the appellant has made detailed written submissions which have been perused. The appellant submitted that this issue was already settled in the appellant's own case for A.Y 2010-11 by Hon'ble ITAT Delhi in ITA NO.6064/Del/2014 dated 23/10/2018 and also in AY 2013-14 in ITA No.253/Del/2017 dated 06.02.2020. In both the decision Hon'ble ITAT held that the capital gain earned by the appellant cannot be treated as business income and dismissed the revenue's appeal. It is also brought on record that the CIT(A) allowed the appeal for A.Y 2012-13 on the same issue. As per the appellant in all these decisions the appellate authorities accepted the method followed by the appellant and hence the action of AO for A.Y 2017-18 is not maintainable.*

*4.4 The appellant also referred the CBDT circular no.6/2016 dated 29/02/2016 in this regard. The relevant portion of the above circular is reproduced as under:*

.....  
.....

*4.5 In view of the above facts the appellant sought for relief and prayed that the head of income cannot be shifted by the AO.*

*4.6 I have gone through the assessment order, ITAT orders and CBDT circular referred by the appellant. By giving due consideration to the decision of Hon'ble ITAT in the appellant's own case the addition made by the AO ought to be deleted as the issue was squarely covered in favour of the appellant.”*

4. The sole issue raised by the Revenue is whether the assessee engaged in the business of purchase and sale of shares, securities, mutual fund, derivatives, etc. can claim LTCG/STCG derived from some investments

exempted under section 10(38) the Act along with similar income also offered as business income.

4. The Ld. Sr. Departmental Representative submitted that the assessee, engaged in the business of purchase and sale of shares, securities, mutual fund, derivatives, etc., had tactfully shown some shares, securities, mutual fund, derivatives, etc. as investment assets and some as stock-in-trade. The intention behind showing some shares, securities, mutual fund, derivatives, etc. as investment assets was to avoid tax or pay tax at a lower rate. It was specifically submitted by the Ld. Sr. DR that the assessee firm came into existence to derive profit from the business of purchase and sale of shares, securities, mutual fund, derivatives, etc. For that, all six partners pooled their funds for business as evident from the partnership deed wherein the objects of the partnership firm were shown as 'to carry on business of funding and investments'. The Ld. Sr. DR, emphasizing on the quantum and frequency of transactions of purchase and sale of shares, securities, mutual fund, derivatives, etc., submitted that the AO had rightly taken the entire such transactions as business and taxed the income derived therefrom as business income. To buttress her contention, she placed reliance on decisions of the Hon'ble Supreme Court in the cases of Sunil Bansal; [2022] 138 taxmann.com 20 & Manoj Kumar Samdaria; [2014] 52 taxmann.com 247 and also on the decisions of the Hon'ble Bombay High Court in the case of Gopal Purohit; 336 ITR 287.

5. At the outset, the Ld. Authorised Representative (hereinafter, the 'AR') contended that this appeal was squarely covered by the decision of the Co-ordinate Bench of the ITAT in the assessee's own case in the ITA No. 6064/Del./2014 (order dated 23.10.2018). Further, he also brought our attention to the order of the Hon'ble Delhi High Court in the case of ShrihariInvestment in the ITA No. 712& 713/2018 (order dated: 27.02.2024), a sister concern of the assessee, wherein the similar issue was decided by the Hon'ble High Court against the Revenue. It was categorically submitted that the facts of the present case and Shrihari Investment (supra) were similar. During the year, the assessee had dealt in single portfolio and there was no stock entered and these shares are 4, 5 years old. Further, the assessee also got relief by the Co-ordinate Bench of ITAT in the assessee's own case in ITA No. 253/Del/2017 dated 09.02.2020.

6. We have heard both parties at length and have perused the material available on the record. We are of the considered view that this case is squarely covered by the decision of the Co-ordinate Bench of ITAT in the assessee's own case in the ITA No. 253/Del/2017 (order dated 09.02.2020) and the ITA No. 6064/Del./2014 (order dated 23.10.2018). Further, we also perused the decision of the Hon'ble Delhi High Court in the case of Shrihari Investment (supra). Respectfully, following the reasoning given by the Hon'ble Delhi High Court in its decision in the case of Shrihari Investment (supra) and the Co-ordinate Bench of ITAT in the assessee's own case, we are

of the considered view that there is no infirmity in the decision of the Ld. CIT(A). Accordingly, we upheld the finding of the Ld. CIT(A). Thus, the appeal of the Revenue stands dismissed.

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

Order pronounced in open Court on 09<sup>th</sup> April, 2025

Sd/-  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

Sd/-  
**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

Dated:09/04/2025

*Binita, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. CIT-DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI