

**आयकर अपीलीय अधिकरण, मुंबई "बी" खंडपीठ**  
**Income-tax Appellate Tribunal "B" Bench Mumbai**

सर्वश्री राजेन्द्र, लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य

**Before S/Sh. Rajendra, Accountant Member & Amarjit Singh, Judicial Member**  
**आयकर अपील सं./I.T.A./4584/Mum/2014, निर्धारण वर्ष /Assessment Year: 2008-09**

ACIT-21(1) 6th Floor, C-10, Pratyaksh Kar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai-400 051.	Vs.	Shri Nailesh P. Dalal 5-6, Viram, 62, Hatkesh Society NS Road No.8, JVPD Scheme Mumbai-400 049. <b>PAN:AACPD 9844 N</b>
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by: Shri Suman Kumar -DR**

**Assessee by: Shri Deepak N. Kanabar-AR**

सुनवाई की तारीख / **Date of Hearing: 15.12.2016**

घोषणा की तारीख / **Date of Pronouncement: 11.01.2017**

**आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश**

**Order u/s.254(1) of the Income-tax Act, 1961 (Act)**

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dated 30.04.2014 of the CIT(A)-32, Mumbai the Assessing Officer (AO) has filed the preset appeal. Assessee, an individual, who derives his income from trading in derivatives, filed his return of income on 30.09.2008, declaring total income at Rs.1.42 crores. The AO completed the assessment u/s. 143(3) of the Income tax Act, 1961 on 16.12.2010 computing his income at Rs.96.67 lakhs.

**Brief Facts:**

2. Effective Ground of appeal is about deleting the penalty levied by the AO u/s. 271(1)(c) for furnishing of inaccurate particulars of income. During the assessment proceedings, the AO found that the assessee had shown capital gain of Rs.81.67 lakhs (Rs.73.56 lakhs STCG & Rs.8.11 lakhs LTCG). He assessed the income from share trading (i.e. STCG and LTCG) the under the head 'business income' and initiated penalty proceedings u/s. 271(1)(c) of the Act. While computing assessment, the AO had made certain disallowances also.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Vide his order dated 2.02.2012 he partly allowed the appeal filed by the assessee and held that the AO had rightly treated the income arising out of share transactions under the head business income, amounting to Rs.73.56 lakhs. He further held that Rs.8.11 lakhs should be taxed under the head LTCG.

4. The AO issued notice u/s. 274 r.w.s. 271(1)(c) of the Act. After considering the submission of the assessee, he held that the assessee had offered profit on sale of shares, securities and

mutual funds under the head capital gain as STCG or LTCG, that the conduct of the assessee was of a trader and not of an investor, that the order of the AO was confirmed by the FAA in quantum proceedings, that the assessee had filed inaccurate particulars of income. Finally, he imposed a penalty of Rs.17.45 lakhs,invoking the provisions of section 271(1)(c) of the Act.

5.The assessee challenged the penalty order before the FAA.Referring to the order of the Tribunal dated 26/03/2004 and corrigendum issued by the Tribunal on 16/04/2014 , the FAA held that the Tribunal had reversed the order of the FAA in quantum proceedings, that the Tribunal had directed the AO to allow the claim of STCG made by the assessee for the year under consideration. Following the order of the Tribunal,the FAA deleted the penalty.

6.During the course of hearing before us,the Departmental Representative (DR) stated that the matter can be decided on merits.The Authorised Representative (AR) referred to ITA No.2925/Mum/2012 dated 26/03/2014 of the Tribunal and relied upon the case of Anant Overseas (P.) Ltd. (54taxmann.com 211) of the Hon'ble High Court of Delhi.

7.We have heard the rival submissions and perused the material before us.We find that the AO had treated the income arising out of sale of shares as business income, that the FAA had confirmed the order of the FAA and had held that income on sale of shares was to be assessed as STCG.As the quantum appeal has been decided in favour of the assessee by the Tribunal, so,the penalty levied by the AO would not survive. Otherwise also,the basic issue was head of income,under which the disputed amount was to be assessed.The assessee had furnished all necessary particulars in his return of income.The AO and the assessee had difference of opinion about the treatment to be given to the income arising out of sale of shares . In our opinion there is no justification for levy of penalty u/s. 271(1)(c) of the Act in such a case. Therefore,confirming the order of the FAA we,decide the effective Ground of appeal against the AO .

In the result,appeal filed by the AO is dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 11<sup>th</sup> January, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 11 जनवरी, 2017 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांकDated : 11.01.2017.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

2. Respondent /प्रत्यर्थी

- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त  
5.DR “E ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई  
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**  
उप/सहायक पंजीकार **Dy./Asst. Registrar**  
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**