

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND**

**SHRI C.N. PRASAD, JUDICIAL MEMBER**

आयकर अपील सं/I.TA No.6589/Mum/2010

(निर्धारण वर्ष / Assessment Year:2006-07)

आयकर अपील सं/I.TA No.8835/Mum/2010

(निर्धारण वर्ष / Assessment Year:2007-08)

आयकर अपील सं/I.TA No.6393/Mum/2012

(निर्धारण वर्ष / Assessment Year:2008-09)

M/s. Sanjay K. Gupta(HUF) Flat No.6, Lotiya Mahal, Plot No.393, 14 <sup>th</sup> Road, Khar (W), Mumbai - 400052	<b>बनाम/</b> Vs.	ACIT Rg.19(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAHHS 0223C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		None
प्रत्यर्थी की ओर से/Respondent by:		Shri. Kailash Gaikwad

सुनवाई की तारीख / Date of Hearing :13.07.2016

घोषणा की तारीख /Date of Pronouncement :29.07.2016

**आदेश / O R D E R**

**PER C.N. PRASAD, JM:**

All these appeals are filed by the Assessee against the order of the Ld. CIT(A)-30, Mumbai pertaining to assessment years 2006-07, 2007-08 & 2008-09.

2. None appeared on behalf of the assessee though the authorized representative noted the date of hearing when the matter was adjourned from 17.05.2016 to 13.07.2016. Since these appeals are old appeals, we are inclined to dispose of these matters on hearing the Ld. Departmental Representative on merits.

**ITA NO.6589/Mum/2010:-**

3. The assessee raised the following effective grounds:-

- “1 *The learned CIT(A) has erred in law and in facts in passing the appellate order, which is invalid and bad in law.*
2. *The learned CIT(A) has erred in law and in facts in confirming the assessment of Rs.64,58,647/- declared by the appellant under the head ‘short term capital gain’ as income from business.*
3. *The learned CIT(A) has erred in law and in facts in sustaining the disallowance of a sum of Rs.5,44,455/- u/s.14A of the Act.*
4. *The learned CIT(A) has erred in law and in facts in concurring with the disallowance of Rs.10,000/- out of Rs.50,000/- claimed by the appellant as depreciation on motor car.*
5. *The learned CIT(A) has erred in law and in facts in approving the disallowance of Rs.7,161/- out of telephone expenses of Rs.35,807/- claimed by the appellant.*
6. *The learned CIT(A) has erred in law and in facts in summarily rejecting the ground raised against levy of interest u/s.234A, 234B, 234C and 234D of the Act.*

4. The Ld. Departmental Representative submits that the Assessing Officer while completing the assessment treated the income from sale of shares as income from business of the assessee as against the contention of the assessee that the same should be assessable under the head capital gains. The Ld. Departmental Representative submits that the Assessing Officer after considering

various aspects viz., magnitude of purchase and sale of shares, dividend income received, marketability of shares, source of funds for acquiring shares, treatment of shares on their sale accounts, motives for the purchase and sale of shares etc., held that these transactions are carried out by the assessee in purchase and sale of shares are nothing but business income and should be assessed as such. The Ld. Departmental Representative submits that this view of the Assessing Officer is upheld by the CIT(A).

5. Coming to the disallowance made u/s.14A, the Ld. Departmental Representative submits that the assessee earned dividend income of Rs.1,29,212/- and he has not made any disallowance towards expenses for earning such dividend income. The Assessing Officer disallowed Rs. 4,95,796/- towards interest and Rs. 48,659/- being 0.5% of average value of investment u/s.14A read with rule 8D. DR submits that the Ld. CIT(A) sustained such disallowance.

6. Coming to disallowance of depreciation on motor car and telephone expresses, he submits that the Assessing Officer while completing the assessments made disallowance of depreciation on motor car of Rs. 10,000/- out of Rs. 50,000/- claimed and telephone expenses of Rs.7,161/- out of Rs. 35,807/- He submits that the Assessing Officer disallowed 20% of these expenses treating them for personal use. The Ld. CIT(A) sustained the said disallowances.

7. On going through the orders of the authorities below and taking into consideration the submission of the learned DR, we find

no infirmity in the order passed by the CIT(A). Appeal of the assessee is dismissed.

**ITA NO. 8835/Mum/2010(2007-08):-**

8. The assessee has raised the following effective grounds:-

- “1 *The learned CIT(A) has erred in law and in facts in passing the appellate order, which is invalid and bad in law.*
2. *The learned CIT(A) has erred in law and in facts in confirming the assessment of Rs.60,09,447/- declared by the appellant under the head ‘short term capital gain’ as income from business.*
3. *The learned CIT(A) has erred in law and in facts in sustaining the disallowance of a sum of Rs.7,72,443/- u/s.14A of the Act.*
4. *The learned CIT(A) has erred in law and in facts in concurring with the disallowance of Rs.8,000/- out of Rs.40,000/- claimed by the appellant as depreciation on motor car.*
5. *The learned CIT(A) has erred in law and in facts in approving the disallowance of Rs.7,730/- out of telephone expenses of Rs.38,649/- claimed by the appellant.*
6. *The learned CIT(A) has erred in law and in facts in summarily rejecting the ground raised against levy of interest u/s.234A, 234B, 234C and 234D of the Act.*

9. The Ld. Departmental Representative submits that the Assessing Officer while completing the assessment treated the income from sale of shares as income from business of the assessee as against the contention of the assessee that the same should be assessable under the head capital gains. The Ld. Departmental Representative submits that the Assessing Officer after considering various aspects i.e. magnitude of purchase and sale of shares, dividend income received, marketability of shares, source of funds for acquiring shares, treatment of shares on their sale accounts, motives for the purchase and sale of shares etc., held that these

transactions are carried out by the assessee in purchase and sale of shares are nothing but business income and should be assessed as such. The Ld. Departmental Representative submits that this view of the Assessing Officer is upheld by the CIT(A).

10. Coming to the disallowance made u/s.14A, the Ld. Departmental Representative submits that the assessee earned dividend income of Rs.1,77,164/- and he has not made any disallowance towards expenses for earning such dividend income. The Assessing Officer disallowed Rs. 6,81,400/- towards interest and Rs. 91,043/- being 0.5% of average value of investment u/s.14A read with rule 8D. DR submits that the Ld. CIT(A) sustained such disallowance.

11. Coming to disallowance of depreciation on motor car and telephone expresses, he submits that the Assessing Officer while completing the assessments made disallowance of depreciation motor car of Rs. 8,000/- out of Rs. 40,000/- and telephone expenses of Rs. 7,730/-/- out of Rs. 38,649/- He submits that the Assessing Officer disallowed 20% of these expenses treating them for personal use. The Ld. CIT(A) sustained the said disallowances.

12. On going through the orders of the authorities below and taking into consideration the submission of the learned DR, we find no infirmity in the order passed by the CIT(A). The appeal of the assessee is dismissed.

**ITA NO.6393/Mum/2012 A.Y. (2008-09):-**

13. The assessee has raised the following effective grounds:-

- “1 *The learned CIT(A) has erred in law and in facts in passing the appellate order, which is invalid and bad in law.*
2. *The learned CIT(A) has erred in law and in facts in confirming the assessment of Rs.1,67,16,101/- declared by the appellant under the head ‘short term capital gain’ as income from business.*
3. *The learned CIT(A) has erred in law and in facts in sustaining the disallowance of a sum of Rs.7,40,359/- u/s.14A of the Act.*
4. *The learned CIT(A) has erred in laws and in facts in summarily rejecting the ground raised against the levy of interest u/s.234A, 234B, 234C and 234D of the Act.”*

14 The Ld. Departmental Representative submits that the Assessing Officer while completing the assessment treated the income from sale of shares as income from business of the assessee as against the contention of the assessee that the same should be assessable under the head capital gains. The Ld. Departmental Representative submits that the Assessing Officer after considering various aspects magnitude of purchase and sale of shares, dividend income received, marketability of shares, source of funds for acquiring shares, treatment of shares on their sale accounts, motives for the purchase and sale of shares etc., held that these transactions are carried out by the assessee in purchase and sale of shares are nothing but business income and should be assessed as such. The Ld. Departmental Representative submits that this view of the Assessing Officer is upheld by the CIT(A).

15. Coming to the disallowance made u/s.14A, the Ld. Departmental Representative submits that the assessee earned dividend income of Rs.3,46,622 and he has not made any disallowance in relation to disallowance towards expenses for earning such dividend income. The Assessing Officer disallowed Rs.

7,40,359/- towards interest and Rs. 87,238/- being 0.5% of average value of investment u/s.14A read with rule 8D. DR submits that the Ld. CIT(A) sustained such disallowance.

16. On going through the orders of the authorities below and taking into consideration the submission of the learned DR, we find no infirmity in the order passed by the CIT(A). The appeal of the assessee is dismissed.

17. In the result, all the appeals filed by the assessee are hereby dismissed.

Order pronounced in the open court on 29<sup>th</sup> July, 2016.

Sd/-

Sd/-

**(RAJENDRA)**

**(C.N. PRASAD )**

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 29<sup>th</sup> July, 2016

व.नि.स./ Rj , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार**

(Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**