

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INCOME TAX APPEAL NO.1974 OF 2011

The Commissioner of IncomeTax-25. ...Appellant.

Vs.

Suresh R. Shah. ...Respondent.

Mr.N.A.Kazi for the Appellant.  
Mr. V.S.Hadade for the Respondent.

**CORAM : S.J.VAZIFDAR &  
M.S. SANKLECHA, JJ.**

**DATE : 20<sup>th</sup> June, 2012**

PC:

This appeal by the Revenue under Section 260A of the Income Tax Act (hereinafter referred to as the "said Act") is from the Order dated 10/11/2010 of the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) relates to Assessment Year 2006-07 (previous year ending 31/3/2006). Being aggrieved by the Order dated 10/11/2010, the appellant has formulated the following questions of law for consideration by this Court:

A) Whether on the facts and circumstances of the case and in law the ITAT was justified in upholding the order of CIT(A) Mumbai dated 17/9/2009 bearing No. CIT(A)-35/ACIT/25(2) ITA 4328/08-09 despite the

facts the Assessee has shown speculation loss and still accepted the claim of Assessee and directed A.O. to accept the claim of Assessee as short term capital gain and long term capital gain instead of share trading business income?

B) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the claim of the Assessee that Assessee indulged in investment in shares without considering the facts and the investigation of the A.O. and the decision of the Hon'ble Supreme Court relied by the A.O. and the facts the Assessee himself has shown speculation loss Rs.13,483/- in share trading business?

2) The respondent is engaged in textile business. By an order dated 23/12/2008 passed under Section 143(3) of the said Act the Assessing officer took a view that the respondent was not an investor in shares but dealer in shares and therefore, rejected the claim of the respondent for being taxed under the head capital gains in respect of the income earned from purchase and sale of shares. This was inter alia on the basis that the respondent had also returned speculation loss of Rs. 13,483/-. Consequently by the above assessment order the total income assessed was Rs.1.92 crores as against the returned income of Rs. 36,213/-.

3) On appeal, the CIT (Appeals) by an order dated 17/9/2009 allowed the appeal of the respondent holding that the respondent was an investor in shares and therefore, income earned on purchases and sale of shares is investment and the same would have to be assessed as his income under the head capital gains and not as income from the head Profits and Gains from the business or profession.

4) Being aggrieved, the revenue/appellant preferred an appeal to the Tribunal. On 10/11/2010 the Tribunal after examining the evidence upheld the order of CIT(A) and concluded that the respondent was an investor in shares and entitled to be taxed under the head capital gains in respect of purchase and sale of shares. The Tribunal after examining the facts found that the respondent had not borrowed any funds for its investments and that the long terms gains were attributable to only shares of 4 companies and 3 of them were held for a period of about 5 to 12 years. So far as short terms capital gains were concerned the Tribunal held that about 93% of the short terms gain/loss was attributable to shares of six companies and in any case all the shares were held for periods ranging in excess of 1 month. With regard to the fact that the respondent had returned speculation loss in his return, the Tribunal followed the decision of this Court in the matter of CIT V/s. Gopal Purohit reported in 228 CTR (Bom.) 582 to hold that there is no bar for an assessee to maintain two separate portfolios, one relating to investment in shares and another relating to business activities involving dealing in shares. Further this Court also held that the aforesaid finding is a pure finding of fact.

5) The appellate authorities have thus come to findings of fact

after examining the relevant material. The same is not perverse.

6) On the above concurrent findings of fact by CIT (Appeals) and the Tribunal, no substantial question of law arises for consideration by this Court.

7) The appeal is therefore, dismissed. No order as to costs.

**( M.S. SANKLECHA, J. )**

**( S. J. VAZIFDAR, J.)**