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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 591/2015

PRINCIPAL COMMISSIONER OF INCOME
TAX-21 DELHI

..... Appellant

Through: Mr. Amol Sinha, Senior Standing
counsel with Ms. Vibhooti Malhotra, Advocate.

versus

ASHOK KUMAR

..... Respondent

AND

ITA 592/2015

PRINCIPAL COMMISSIONER OF INCOME
TAX-21 DELHI

..... Appellant

Through: Mr. Amol Sinha, Senior Standing
counsel with Ms. Vibhooti Malhotra, Advocate.

versus

ASHOK KUMAR

..... Respondent

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

17.08.2015

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CM Nos. 15395/2015 & 15396/2015 (for exemption)

1. Exemptions allowed subject to all just exceptions.



2. The applications are disposed of.

ITA Nos. 591/2015 & 592/2015.

3. These two appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are directed against a common impugned order dated 2nd March 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 1046/Del/2012 and 1314/Del/2012 for Assessment Years ('AYs') 2007-08 and 2008-09 respectively.

4. The common question that arises in both appeals is whether the Commissioner of Income Tax (Appeals) ['CIT (A)'] was justified in reversing the Assessing Officer's ('AO') treatment of the income of the Assessee for trading in shares as a business income instead of capital gains?

5. There are three aspects that have been examined that is the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales to determine the nature of transactions. Although the AO held against the Assessee, both CIT (A) and the ITAT have concurrently found on facts that on the above three parameters being applied to the transactions



in the two AYs, it could not be said that the Assessee was in fact essentially trading in shares and the income therefrom should be treated as business income. In particular, it has been a finding in para 43 of the order of the CIT (A) which has been concurred with by the ITAT.

6. No substantial question of law arises for determination.

7. The appeals are dismissed.



S. MURALIDHAR, J



VIBHU BAKHRU, J

AUGUST 17, 2015