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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 550/2015

SATISH KUMAR GUPTA Appellant
Through: Mr. Ajay Vohra, Senior Advocate with
Ms. Kavita Jha, Mr. Gaurav Jain, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent
Through: Mr. Rahul Chaudhary, Advocate with
Mr. Ruchir Bhatia, Advocate.

With

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ITA 551/2015

SATISH KUMAR GUPTA Appellant
Through: Mr. Ajay Vohra, Senior Advocate with
Ms. Kavita Jha, Mr. Gaurav Jain, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent
Through: Mr. Rahul Chaudhary, Advocate with
Mr. Ruchir Bhatia, Advocate.

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ITA 552/2015

SATISH KUMAR GUPTA Appellant
Through: Mr. Ajay Vohra, Senior Advocate with
Ms. Kavita Jha, Mr. Gaurav Jain, Advocates.

versus



ASSISTANT COMMISSIONER OF INCOME TAX Respondent
Through:Mr. Rahul Chaudhary, Advocate with
Mr. Ruchir Bhatia, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **19.10.2015**

1. These appeals by the Appellant Assessee under Section 260A of the Income Tax Act ('Act) are directed against a common order dated 13th January 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 895/Del/2000, 6806/Del/2010 and 4946/Del/2011 for the Assessment Years ('AYs') 2006-07, 2007-08 and 2008-09 respectively.
2. The common issue involved in the appeals before the ITAT was the action of the Commissioner of Income Tax (Appeals) [CIT (A)] in treating the income of the Appellant Assessee as short term capital gains and long term capital gains instead of business income as determined by the Assessing Officer ('AO').
3. The Assessee is engaged in the business of export of hand knitted carpets and handicrafts for over thirty years. According to the Appellant, simultaneous with the said business, he also invested surplus funds in



shares and mutual funds including investment through portfolio management schemes ('PMS') for earning capital appreciation and dividend.

4. The manner of treatment of the purchase and sale of shares by the Assessee formed the subject matter of the assessment for the aforementioned AYs. The AO was of the view that the income earned from the sale of shares and mutual funds was business income on account of the large number of scrips in which the Assessee had dealt with and the frequency of the transactions.

5. The CIT (A), after seeking a remand report from the AO, accepted the plea of the Assessee that in some of the instances, even though the volumes were heavy, the period of retention was such that the the trading in shares could be viewed as a business activity.

6. In the impugned order the ITAT has while remanding the case back to the CIT (A) observed that the question as to whether income from PMS was in the nature of capital gains or business income has not been addressed. The ITAT further observed that given the number of scrips dealt with by the Assessee coupled with frequent trades and changes in scrips, the Assessee could not be held to be only an investor but a trader as well. The ITAT held:



“ From the above facts and circumstances, we are of the considered opinion that the assessee though had classified all unsold shares as on the close of accounting year as investments yet he was a both trader and an investor”. While setting aside the order of the CIT (A), the ITAT directed the CIT (A) to re-examine the three AYs independently as the entire facts in one year may not be available in another year.

7. Having heard learned counsel for the parties, the Court finds merit in the contention of learned Senior counsel for Assessee that the ITAT appears to have prejudged the issue whether the Assessee was also a trader in shares apart from being an investor. That conclusion was required to be arrived at by the CIT (A) after re-examining the matter in the light of the issues highlighted by the ITAT. The CIT (A) should have been given a free hand to arrive at an independent decision uninfluenced by the observations of the ITAT on merits.

8. Accordingly, the impugned order dated dated 13th January 2015 passed by the ITAT in ITA Nos. 895/Del/2000, 6806/Del/2010 and 4946/Del/2011 for AYs 2006-07, 2007-08 and 2008-09 is modified by directing that the CIT (A) will undertake the exercise of examining the materials *de novo* and



arriving at a decision uninfluenced by the observations and/or conclusions of the ITAT including whether the Assessee was both a trader and an investor. Needless to say that this Court has also not expressed any opinion on the above issue.

9. The appeals are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 19, 2015
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