

Income from sale of shares treated as capital gain even when it witnessed higher frequency of transactions

Summary – The High Court of Gujarat in a recent case of Nita M. Patel, (the Assessee) held that where assessee had shown income arising from sale of shares as long-term capital gain and she had treated purchase and sale of shares as investment, Assessing Officer was wrong in treating said income as business income on plea that assessee had indulged in frequent purchase and sale of shares and magnitude of some transactions was very high.

Facts

- In the return of income filed for the assessment year 2009-10, the assessee had shown income arising from the sale of shares as long-term capital gain. She had treated the purchase and sale of shares as investment.
- The Assessing Officer having noticed that the assessee had indulged in frequent purchase and sale of shares and the magnitude of some transactions was very high treated the said income as income from business.
- On appeal, the Commissioner (Appeals) directed the Assessing Officer to treat the income from the share transactions as long-term capital gain instead of business income.
- On second appeal, the Tribunal relying upon the decision of the coordinate Bench in the case of the very assessee on the similar issue with respect to the assessment year 2005-06 dismissed the appeal preferred by the revenue.
- On appeal to High Court:

Held

- In the instant case, the dispute is with respect to the assessment year 2009-10. Identical question came to be considered with respect to the assessment year 2005-06 and similar treatment was given by the Assessing Officer treating the income from the shares as business income, which came to be deleted by the Commissioner (Appeals), which further came to be confirmed by the Tribunal. By passing the impugned judgment and order, the Tribunal has relied upon the decision in IT Appeal No. 937/Ahd/2009 for the assessment year 2005-06 in the case of the very assessee and the said order has been confirmed by High Court *vide* judgment and order dated 19-8-2013 in Tax Appeal No. 71/2013. It is also required to be noted that the shares, which were sold during the assessment year in question, were treated by assessee as investment and the Assessing Officer accepted the same as investment.
- Therefore, the order passed by the Tribunal in treating the income from share transactions as long-term capital gain deserved to be upheld.