

No disallowance for cash payment for purchase of gold bars held as investment: ITAT

Summary – The Delhi ITAT in a recent case of Laxman Dass Mittal, (the Assessee) held that where assessee had shown purchase of gold as investment in balance sheet as well as in wealth-tax return and, further, purchases and sales were made at prevalent market price, loss incurred on sale of gold within a year was to be treated as short term capital loss

Facts

- The assessee had shown short-term capital loss of Rs. 8.08 Lakh on sale of gold bars. The Assessing Officer required the assessee to submit details in respect of sale/purchase of gold with proof of delivery, in response to which, the assessee submitted that he had purchased gold weighing 5120.960 gms for a total consideration of Rs. 6.24 crore during financial year 2007-08 and purchase was made in cash out of cash withdrawal vide cheque.
- However, the Assessing Officer was not satisfied with this explanation and after considering the definition of 'business' under section 2(13) and relying on the decision of the Supreme Court concluded that it was an adventure in nature of trade which was to be considered under section 28. He, accordingly, held that said loss was assessable as business loss and not as short-term capital loss. Further, since assessee had admittedly made the purchase in cash, the Assessing Officer invoked section 40A(3) and made a disallowance of purchase amount.
- On appeal, the Commissioner (Appeals) allowed the assessee's appeal treating the loss incurred on sale of gold bar as short-term capital loss and accordingly, deleted the disallowance under section 40A(3).
- On revenue's appeal:

Held

- The gold was purchased in financial year 2007-08 on 28-1-2008. In the balance sheet on 31-3-2008 it was disclosed as assessee's investment and it was also shown in the assessee's wealth-tax return. Therefore, there was no evidence with the Assessing Officer to take a contrary view. The purchase and sale bills of gold as produced before the Commissioner (Appeals) showed that the purchases and sales were made at prevalent market price of the gold. Therefore, there is no reason to interfere with the order of the Commissioner (Appeals) on the issue in question.