Profit from sale of shares was taxable as capital gains if purchase was made with intention of investments

Summary – The High Court of Gujarat in a recent case of Bhanuprasad D Trivedi (HUF), (the Assessee) held that where assessee had purchased shares with clear intention of being an investor and held shares by way of investment, gain arising out of transfer of shares should be treated as capital gains and not business income

Where Assessing Officer had made addition to income of assessee by way of unexplained cash credit only on presumption that loan was not found to be reflected in balance sheet of donor, since assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified

Where assessee had made investment in shares for earning long term capital gain, sale of shares should be treated as long term capital gain and mere source of shares would not change nature of income from sale of shares

Facts

- A search was conducted at the premises of assessee, leading to the Assessing Officer passing order of assessment under section 153A read with section 143(3) determining total income of the assessee which included a sum received from sale of shares treating as business income and certain amount by way of unexplained cash credit.
- On appeal, the Commissioner (Appeals) deleted both the additions.
- On further appeal, insofar as the first question is concerned, the Tribunal while confirming the view of the Commissioner (Appeals), held that the intention of the assessee at the time of the purchase of shares was paramount. If the assessee had clear intention of being an investor and showing the shares of investment. The assessee under consideration was investor and, therefore, any gain arising out the transfer of shares should be treated as capital gains be it short term or long term.
- On revenue's appeal to the High Court :

Held

- The Commissioner (Appeals) and the Tribunal having applied such parameters on the facts of the case and having come to the conclusion that the assessee's stand that the shares were held by way of investment and, therefore, the sale thereof should result in long term capital gain instead of business income, calls for no interference.
- The second question pertains to deletion of addition made by the Assessing Officer under section 68. The Tribunal confirmed the view of the Commissioner (Appeals) that the Assessing Officer had made the additions only on the presumption that the loan was not found reflected in the balance-sheet of the donor which was wrong presumption. The Tribunal confirmed the view of the

Commissioner (Appeals) that the assessee had demonstrate the genuineness of the transaction as also the reliability and creditworthiness of the donor. Such being the facts, no question of law arises.