

Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 527 of 2007

Petitioner :- The Commissioner Of Income Tax

Respondent :- Shri Atul Kanodia

Petitioner Counsel :- R.K.Upadhyaya

Hon'ble Ferdino Inacio Rebello,Chief Justice

Hon'ble Amreshwar Pratap Sahi,J.

Heard learned counsel for the appellant revenue department.

The department has preferred this appeal in respect of following questions produced hereinbelow:

"1. *Whether on the facts and in the circumstances of the case, the Hon'ble I.T.A.T. was justified in confirming the order of the Commissioner of Income tax(A) directing the Assessing Officer to treat the profit on sale of shares as capital gain instead of income from business as assessed by the Assessing Officer in order U/s.143(3)/147 of the Income tax Act, 1961 holding that the assessee had demonstrated that the shares in question were actually held as investment ignoring the findings of the Hon'ble Supreme Court in the case of G. Vankastesh Wamy Naidiu & Co. Vs. C.I.T.-35 ITR-594(S.C.) and also Express News Paper Ltd. Vs. C.I.T. 53 ITR-250 (S.C.) ?*

(2. *Whether on the facts and in the circumstances of the case, the Hon'ble I.T.A.T. was justified in confirming the order of the Commissioner of Income tax(A) directing the Assessing Officer to treat the profit on sale of shares as capital gain instead of income from business as assessed by the Assessing Officer in order U/s.143(3)/147 of the Income Tax Act, 1961 ignoring the fact that the assessee was share broker and the main business of the assessee was purchase and sales of shares and as per judicial pronouncement contained in 35 ITR 594 (Supreme Court) and 53 ITR -250 (S.C.) income derived by the assessee from purchase and sales of shares is classified under business income and not as capital gain ?"*

The Assessment Year is 1997-98.

There are two concurrent findings of fact by the CIT(A) and ITAT. There is no dispute that shares had been held by the assessee since 1992 and were shown in the balance sheet separately as investments. Once these concurrent findings of fact are there, the question of law as framed would not arise.

Accordingly, the appeal stands dismissed.

Order Date :- 28.10.2010
RK

(A.P. Sahi,J)

(F.I. Rebello,CJ)