IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 477 of 2010 (O&M)

Date of Decision: 11.04.2016

Commissioner of Income Tax, Faridabad ....Appellant

Versus

Shri Milap Raj Bhansali

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Rajesh Katoch, Advocate for
Mr. Tajender K. Joshi, Advocate
for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate
for the respondent.

RAJESH BINDAL,J.

This appeal has been filed under Section 260 A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 24.7.2009 passed by the Income Tax Appellate Tribunal, Delhi Bench-E, New Delhi, in ITA No. 312/Del/2009, for the assessment year 2005-06, raising the following substantial questions of law:

> Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding the order of the Ld. CIT(A) in holding income of ₹ 1,75,736/- and ₹ 6,72,625/- as short term capital gains and income of ₹ 2,23,950/- and ₹ 2,98,558/- as long term capital gains disregarding the fact that the income of ₹ 13,70,900/- from trading of shares is treated as business income u/s 28 of the Income Tax Act, 1961 as the assessee was dealing in shares with the motive to earn profit and not to earn dividend?

Learned counsel for the appellant-revenue submitted that in view of circular No.21/2015 dated 10.12.2015 read with circular No.279/Misc/M-142/2007-ITJ (Part) dated 8.3.2016, issued by Central Board of Direct Taxes, he does not wish to press the present appeal, as the tax effect involved is less than ₹ 20 lacs. However, he prays that liberty be granted to the revenue to file an application for revival of the appeal in case something survives therein.

Dismissed as not pressed with liberty as prayed for. It is however, clarified that withdrawal of the appeal by the revenue shall not be taken as affirmation of order of the Tribunal on merits. The legal issue as claimed by the revenue is left open to be adjudicated in an appropriate case.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

11.04.2016
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