$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

3&4.

\+ **ITA 326/2016**

PR. COMMISSIONER OF INCOME TAX-09 ..... Appellant

Through: Mr. Ashok K. Manchanda, Senior Standing counsel.

versus

W.G. SHARE BROKING PVT. LTD. ..... Respondent

And

\+ **ITA 335/2016**

PR. COMMISSIONER OF INCOME TAX-09 ..... Appellant

Through: Mr. Ashok K. Manchanda, Senior Standing counsel.

versus

W.G. SHARE BROKING PVT. LTD. ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE ASHUTOSH KUMAR

O R D E R

% **08.07.2016**

1. These two appeals by the Revenue are directed against the common judgment dated 19th August 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 2559 and 2553/Del/2011

for the Assessment Years ('AYs') 2006-07 and 2007-08.

2. The central question that has been urged by the Revenue in these appeals is that the ITAT erred in affirming the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] which reversed the orders of the Assessing Officer ('AO') treating the entire profit from share transactions as business income. For AY 2006-07, the CIT (A) held that out of the profit of Rs. 6,35,42,874 from share transactions treated by the AO as business income, only Rs. 2,17,10,019/- would be business income and the balance of Rs. 4,18,32,855/- would be capital gains. For AY 2007-08 the CIT (A) held that out of the profit of Rs. 1,02,92,943/- from share transactions treated by the AO as business income, only Rs. 54,85,307/- would be business income and the balance Rs. 48,07,636/- would be capital gains. The ITAT also concurred with the CIT (A) on the question of splitting the interest expenditure incurred in connection with income from capital gains and business income.

3. It is sought to be urged by Mr. Ashok K. Manchanda, learned Senior Standing counsel for the Revenue, that on the facts of the present case where the Assessee's income from shares allegedly held as investment was disproportionately higher than that derived from the shares held as stock-in-trade. Accordingly, there was every reason to infer that the Assessee had manipulated its books of accounts to show the shares held for the purposes of trading as investment. He also sought to rely on the Explanation to Section 73 of

the Income Tax Act 1961 ('Act').

4. Having examined the impugned order of the ITAT and the corresponding orders of the AO and the CIT (A), the Court is not inclined to agree with the above submission. Both the CIT (A) and the ITAT have concurrently concluded on facts that the Assessee has in its books of account been treating separately the shares held as investment and those held as stock-in-trade. The ITAT noted that merely because the Assessee was engaged in trading of stocks, derivatives and features, it did not mean that the Assessee was "precluded from maintaining investment portfolio."The ITAT referred to CBDT Circular No. 4 of 2007 which recognised that an Assessee having two portfolios "may have income under both heads i.e. capital gains as well as business income." The ITAT further referred the decisions of the High Court and the Supreme Court and examined whether the scrips were bought from the borrowed funds, the period for which the shares were held and the frequency of the trading etc.
The specific finding of the ITAT is that where the Assessee "from the beginning held the shares under investment portfolio the same is treated as investments in the books of account and where the shares are held for trading purposes the profit arising there on is offered to taxed under the business head."

5. Having heard the submissions of Mr. Manchanda, the Court is not persuaded to re-examine the above concurrent finding on facts by both the CIT (A) and the ITAT. No case has been made out by the

Revenue that the above factual findings are perverse warranting interference by the Court. As regards the Explanation to Section 73 of the Act is concerned, apart from the fact that this point does not appear to have been urged by the Revenue before the ITAT and, therefore, not dealt with by it, the Court is not satisfied that the said provision has any application in the facts of the present case.

6. No substantial question of law arises for consideration. The appeals are dismissed.

S.MURALIDHAR, J

ASHUTOSH KUMAR, J

JULY 08, 2016
mg