IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1750 OF 2014

Commissioner of Income Tax-17 .. Appellant

v/s.

Mr. Hiren Dand .. Respondent

Mr. A.K. Saxena for the appellant
Mr. S.C. Tiwari a/w Ms. Rutuja Pawar for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 1st AUGUST, 2017

P.C.

1. The present appeal pertains to Assessment Year 2008-09.

2. The learned Counsel submits that the Assessing Officer on examining the transactions entered into by the assessee in respect of various shares, had rightly come to the conclusion that the income derived from the sale of shares is a "business income" and not a "short terms capital gain". According to the learned Counsel, the respondent has dealt with the sale and purchase of the shares repeatedly and frequently. As such, the Assessing Officer has rightly

termed the same as a “business income” and CIT(A) so also the Tribunal have committed an error while reversing the said finding of the Assessing Officer. The learned Counsel submits that the period of holding of shares by the assessee is less than one month.

3. The learned Counsel for the respondents supports the order.

4. We have gone through the judgment of the CIT(A) and the Tribunal. They have concurrently arrived at the conclusion that the income derived from the sale of shares is a short terms capital income. No straight jacket formula can be laid down to arrive at a conclusion that the income derived from the sale of shares is a business income or capital gain. It would depend upon the facts and circumstances of each case. It has been observed by the Commissioner that only 10 scripts are traded. It was not a case of the repeated sale of the same script. It was not a case of frequent buying and selling to make quick money. The intention can be proved by the conduct of the assessee after the purchase. The CIT(A) has given the details of the 10 scripts out of which short term capital gain was claimed. Upon appreciation of the evidence

plausible conclusion has been arrived at by the CIT(A) and the Tribunal, more over for past three assessment years also the income of the assessee through sale of shares is held to be short term and long term capital gain. The said order is accepted by the Revenue.

5. Considering the above, the concurrent finding of facts arrived at by the CIT(A) and the Tribunal do not warrant interference. No substantial question of law arises. The Appeal is dismissed. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**