

\$~10

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

+ **ITA 836/2016**

THE PR. COMMISSIONER OF INCOME TAX -6..... Appellant

Through: Mr. Ruchir Bhatia, Advocate

versus

M.B. FINMART PVT. LTD.

..... Respondent

Through

CORAM: JUSTICE S. MURALIDHAR

JUSTICE ANIL KUMAR CHAWLA

ORDER

%

08.05.2017

1. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against the order dated 9th June, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1145/Del/2014 for the Assessment Year ('AY') 2010-11.

2. The short question sought to be urged by the Revenue is whether the income of Rs. 55,80,788/- and Rs. 1,59,15,398/- from trading in shares/mutual funds should be treated as business income or capital gains?

3. The Court finds that the concurrent findings of both the Commissioner of Income Tax (Appeal) and the ITAT are that the consistent treatment of the said transactions in the books of accounts of the Assessee and the volume and frequency of such transactions did not justify treating the income as business income. In particular, the ITAT has noted in para 9 as under:

“9. From the details of purchase and sale and period of holding of shares, it is observed that the assessee has held 11 transactions of shares for more than 50 days and the balance were held for more than 100 days in total number of 30 transactions. In the previous year and the subsequent years relevant to the Assessment Year under consideration the Department has been consistently accepting the investment in shares held by the assessee. During the year under consideration, the assessee has sold shares of two companies being Hindustan Construction and GMR Infra Structure. The remaining shares relate to purchases made in the previous years.”

4. In the circumstances, in the facts and circumstances of the case, the Court is not persuaded to hold to the above concurrent findings suffer from any perversity. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

ANIL KUMAR CHAWLA, J

MAY 08, 2017

tp