**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.**
**BENCH AT AURANGABAD.**

**INCOME TAX APPEAL NO. 62 OF 2015**

The Commissioner of Income Tax-I,
Aayakar Bhavan, PMT Building, B-Wing
Shankar Seth Road, Swargate,
Pune-37. … Appellant

*VERSUS*

Baldevsingh Santsingh Wahi (HUF)
B-34, Raj Chambers,
Near Kothla Road,
Ahmednagar. … Respondent

……….
Dr. Kalpalata Patil Bharaswadkar, Advocate for the appellant
Mr Alok Sharma, AGP for respondent/State
…………

**CORAM : S. V. GANGAPURWALA &**
**A. M. DHAVALE, JJ.**
**DATE : 20$^{TH}$ FEBRUARY, 2018.**

**ORDER:**

1. This Income Tax Appeal pertains to assessment year 2008-09.

2. Mrs Kalpalata Patil Bharaswadkar, the learned counsel for the appellant submits that the Tribunal has gone on the premise of consistency only and has not considered the frequency of the transactions, the enormous amount of the sale and purchase of share

transactions. The business income shown was far too less than the income received from the business of shares. The Commissioner (Appeals) and the Tribunal have erroneously considered that only because for some period the shares were held would not come within the ambit and purview of business income. According to the learned counsel, only because upto the year 2005-06 transactions in shares were treated as short term and long term capital gain that would not *ifso facto* be sufficient to consider the same to be a short term or long term capital gain for the present year. The CBT Circular dt.15.06.2007 also has not been considered. According to the learned counsel, it is not shown by the assessee that the shares were held as stock in trade. The substantial nature of transaction has to be considered. She relies on the judgment of the Hon'ble Apex Court in the case of ***The Commissioner of Income-Tax, Nagpur v. M/s. Sutlej Cotton Mills Supply Agency Ltd.*** reported in ***AIR 1975 SC 2106***.

3. The assessee has dealt in shares. The Commissioner (Appeals) had held that the transactions which were of shares held for less than three months should not be considered as capital gain and to that extent had remitted the matter. The department and the assessee filed appeal before the Tribunal. The Tribunal dismissed the appeal of the department and allowed the appeal of the assessee.

4. It would be seen that, consistently till the year 2005-06, the Assessing Officer was considering the transactions of these assesses as short term and long term capital gain. Subsequently, for subsequent year the Assessing Officer has held the transaction in shares to be a business income. The Tribunal set aside the said order. The Department filed appeal before this Court bearing Appeal No.13/2014, 14/2014, 15/2014 and 16/2014. This court by a speaking order dismissed the appeals of the department holding the transaction in shares to be a long term and short term capital gain depending upon their holding.

5. It was observed that, there is no evidence on record besides the number of transactions and the profit earned. The pattern of business activity has not undergone change. The transport business continues.

6. It is a fact that, the assessee has also his transportation business as is reflected in the oder.

7. Considering the judgment of this court for the earlier assessment year, there are no changed circumstances in the present

assessment year and the transactions in shares are similar. No question of law arises. The appeal is dismissed. No costs.

**[ A. M. DHAVALE ]**
**JUDGE**

**[ S. V. GANGAPURWALA ]**
**JUDGE**

Punde