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

INCOME TAX APPEAL NO.573 OF 2017

Dilipkumar Vishindas Lakhi ... Appellant
versus
The Joint Commissioner of Income Tax,
Range 16(3) ... Respondent

Mr. S.S.Shetty I/by Mr. Atul Jasani, for Appellant.
Mr. Sham Walve, for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 11th JUNE, 2019

P.C.:

1. This Appeal is filed by the Assessee to challenge the Judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). The following question is presented for our consideration :

(i) Whether in the facts and circumstances of the case and in law, the Tribunal was right in holding that the gains arising from transfer of shares held for a period of less than 30 days is to be treated as business income and not as a capital gains ?

2. This appeal relates to the assessment year 2008-09. Identical question had came up for consideration before this Court in the case of this very assessee for earlier assessment year in Income Tax Appeal No.155 of 2017. The Appeal was dismissed

making the following observations :

> *"7. At the outset, we may record that learned counsel for the assessee is correct in contending that the mere demarcation of holding shares for less than 30 days or more cannot be conclusive or even in a given case the determinative factor. However, in the present case, we must appreciate the essence of the order of the Tribunal in overall facts and circumstances of the case. After noticing the assessee's activity of buying and selling shares and income generated from such activity, the Tribunal while granting partial relief for the Assessee had recorded that the same was done in peculiar facts of the case. The ultimate directions of the Tribunal therefore, must be viewed in such backdrop.*
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> *8. The facts on record would suggest that during the period relevant to assessment year 2007-08, which is under consideration, the assessee had executed as many as 106 transactions of buying and selling shares within less than 30 days. The total value of sale transactions was Rs.7.11 crores. The assessee had also engaged in buying and selling shares of sizable volume and value after holding them for a period of ranging between two months to upto 200 days. It was also noticed that the assessee was indulging intra-day transactions without taking delivery of the shares which gave rise to the assessee's speculative income.*
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> *9. When seen in totality of the facts and circumstances of the case, one cannot find fault to the Tribunal's conclusion that the assessee was not purely an investor in shares. The Tribunal introducing the demarcation line of holding of shares of less than 30 days and more than 30 days for giving different treatment for receipts arising out in sale of such shares would not vitiate the very foundation of the Tribunal's finding. No*

question of law arises. Income Tax Appeal is dismissed."

3. In the result, this Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**