

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
(Original Side)

Reserved on : 10.02.2026.

Pronounced on : 20.02.2026

ITAT 153 OF 2025

With

IA No. GA 2 of 2025

Principal Commissioner of Income Tax-1, Kolkata

...Appellant

-Vs-

Russel Credit Limited

...Respondent

Present:-

Mr. Prithu Dudheria, Adv.

...for the appellant

Ms. Nilanjana Banerjee, Adv.

..... for the Respondent

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
And
THE HON'BLE JUSTICE UDAY KUMAR

Rajarshi Bharadwaj, J:

1. The appellant/petitioner has filed this appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), challenging the order dated October 23, 2024 passed by the Learned Income Tax Appellate Tribunal (ITAT), Kolkata Bench "B", for the assessment year AY 2018-19, on the substantial questions of law formulated at the time of admission.

2. The facts of the case in a nutshell are that the respondent/assessee, a limited company, filed its return of income for Assessment Year 2018-19 on September 29, 2018, declaring a total income of Rs.36,79,98,920/-, which it revised on March 29, 2019 to Rs.36,18,36,450/-. The Assessing Officer completed the assessment under Section 143(3) on March 8, 2021, at an assessed income of Rs.39,76,74,478/-. This included treating the gain of Rs.12,97,56,648/- from the sale of 34 unquoted preference shares of ICICI Bank that was purchased in June 2012 and held for nearly six years before it was sold in March 2018 as long-term capital gain, set off against brought-forward losses from AY 2012-13, alongside allowing a Rs.96,65,106/- losses on disposal of property, plant and equipment.

3. The Principal CIT invoked Section 263 on February 27, 2023, holding the assessment erroneous and prejudicial to revenue interests due to the shares' classification as stock-in-trade, excess set-off and disallowable capital loss. He set aside the order. Thereafter, the assessee appealed to the ITAT "B" Bench, Kolkata, which, by order dated October 23, 2024, upheld the AO's view in line with the CBDT Instruction dated May 2, 2016. Being aggrieved by the order, the revenue preferred the present appeals under Section 260A.

4. Learned counsel appearing for the appellant raises the issue on the following substantial questions of law that have been admitted:

- a. *Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in setting aside the order u/s. 263 of the Income Tax Act, 1961 considering that the exercising of jurisdiction u/s. 263 on the issue of dispute fell without appreciating that "the assessment order was erroneous and prejudicial to the interest of revenue within the scope of explaining 2(b) of Section 263 of the Income Tax Act, 1961?*
- b. *Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in adjudicating that conversion*

of stock in trade into asset is allowed within a financial year and just before the sale of stock in trade took place?

- c. Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in holding that the profit on sale of unlisted preferential shares of ICICI Bank Ltd be considered as Long-Term Capital Gain instead of income from business as the same was appearing in the Balance Sheet of the company as stock in trade?*
- d. Whether in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not considering Para 3(b) of the CBDT Circular No. 6/2016 dated 29.02.2016 clarifying that income from transfer of shares and securities may be claimed under Capital Gain after a period of holding 12 months before the date of transfer at the desire of the assessee and the same principle to be followed in subsequent years?*

5. We have heard the appellant-Revenue and Mr. Khaitan, learned Senior Counsel for the respondent-assessee at length. Since the issues involved are pure questions of law and have been settled by binding precedents of the Hon'ble Supreme Court and this Court, we proceed to decide the appeal on merits.

6. Firstly, section 263 of the Act, vests the Principal Commissioner with revisional powers to call for and examine an assessment order only if it is both erroneous and prejudicial to the revenue's interests. These twin conditions operate conjunctively, meaning both must be satisfied simultaneously for jurisdiction to arise. This stringent threshold prevents arbitrary interference and upholds the finality of assessment orders where reasoned decisions have been made.

7. Explanation 2(b) to Section 263 deems an order "erroneous" if passed without necessary inquiries or verifications that ought to have been conducted. However, the record herein demonstrates that the Assessing Officer (AO) diligently inquired into the assessee's claim concerning the purchase and sale of 34 unlisted preference shares in ICICI Bank Ltd. A notice under Section 142(1)

was issued, prompting the assessee to submit comprehensive evidence such as the Board resolution dated May 21, 2012 authorizing the acquisition as an investment, purchase and sale documents, balance sheet extracts, capital gains computation and reliance on the CBDT Instruction dated May 02, 2016. The AO considered this material and accepted the Long-Term Capital Gains claim, reflecting a prima facie inquiry rather than a mechanical acceptance.

8. The Principal Commissioner's invocation of Section 263 falters on the ground that the assessment order lacks "elaborate discussion." It is a settled jurisprudence, as held in ***CIT v. Max India Ltd.*** reported in **(2007) 295 ITR 282 (SC)** that clarifies brevity in reasoning does not equate to non-inquiry or error. Where the AO has made relevant enquiries and adopted a plausible view supported by material, revisional jurisdiction cannot be exercised merely because the revisional authority disagrees. This principle safeguards against substituting superior wisdom for the AO's reasonable judgment, preserving administrative efficiency.

9. As the AO's stance aligned with the binding CBDT Instruction dated May 02, 2016, which categorises income from unlisted shares transfers as "Capital Gains," in absence of specified exceptions. No such exceptions were indicated or proven herein, rendering the view not only plausible but authoritative. Thus, the order was neither erroneous nor prejudicial to revenue, as no revenue loss accrued from a legally tenable position.

10. Thus, the Tribunal correctly set aside the revisionary order, holding that Section 263 requires more than mere retrospective disapproval. We answer substantial question (a) in the affirmative, i.e., against the revenue and in favour of the assessee.

11. Secondly, the revenue's contention before the Tribunal that the assessee converted stock-in-trade into a capital asset shortly before the sale lacks foundational support in the prior proceedings, rendering it untenable. Crucially, neither the Assessing Officer nor the Principal Commissioner explicitly recorded any finding of such conversion during the relevant previous year. This omission

is pivotal, as it underscores a procedural infirmity, revisional proceedings under Section 263 of the Act must be anchored in the factual matrix already established. The revisional order per se did not proceed on the premise of conversion, focusing instead on other grounds. Introducing new facts at the appellate stage constitutes an impermissible attempt to lay a fresh factual foundation.

12. The Tribunal's observation in this regard aligns squarely with the settled principles of tax jurisprudence. Appellate forums, including the Income Tax Appellate Tribunal (ITAT), operate within the confines of the record as it stood before lower authorities. As held in ***CIT v. Shree Manjunatheswara Packing Products & Camphor Works*** reported in ***(1998) 231 ITR 53 (SC)***, a new plea altering the character of the transaction cannot be sprung at the appellate level without prior ventilation. Here, the absence of any conversion finding in the AO's assessment or PC's revision order bars the revenue from pivoting to this argument, preventing a backdoor re-characterization of the gains.

13. Even on merits, the revenue's plea falters. The shares were acquired in June 2012 and transferred in March 2018, reflecting a holding period of nearly six years, far exceeding the typical tenure for stock-in-trade in trading activities. The transaction was isolated and singular, devoid of the volume, frequency or intent of repetitive trading. Absent evidence of business-like activity or proximate conversion, the gains qualify as capital gains under section 45 of the Act not business income under section 28 of the Act.

14. In these circumstances, the Tribunal did not erred in rejecting the plea. We answer substantial question (b) in the affirmative, i.e., against the revenue and in favour of the assessee affirming the capital asset characterization.

15. Thirdly, the core issue before this Court is whether the surplus arising from the sale of unlisted preference shares by the assessee constitutes business income or capital gains. This determination hinges on a fact-specific analysis, guided by well-established judicial principles that scrutinize cumulative factors such as the intention at acquisition, period of holding, frequency of

transactions, manner of valuation and the assessee's overall conduct. In the present case, the shares were acquired pursuant to a specific Board resolution designating them as investments, evidencing a clear investment intent from inception. They were held for nearly six years, a duration indicative of a long-term investment rather than trading stock. Critically, there was no regularity or frequency of transactions making it a solitary sale, with no pattern of repetitive dealing. The shares were consistently valued at cost in the assessee's books, eschewing the "lower of cost or market value" method typical of trading activities. The assessee's conduct thus aligns squarely with that of an investor, not a trader. It is a trite law that mere accounting nomenclature cannot dictate the true nature of the asset or income. As held in ***Electronic Corporation of Tamil Nadu Ltd. v. Dy. Commissioner of Income Tax*** reported in **(2019) 417 ITR 283 (Mad)**, the substance prevails over form, reinforcing that labels alone are inconclusive. Bolstering this position are authoritative CBDT instructions aimed at curbing litigation and ensuring uniformity. The CBDT Instruction dated May 02, 2016 explicitly directs that income from the transfer of unlisted shares be assessed as capital gains, subject to narrow exceptions like sham transactions or lack of genuineness, none of which the revenue has substantiated herein. While CBDT Circular No. 6/2016 dated February 29, 2016 primarily addresses listed shares, it underscores the fact-dependent nature of the inquiry and the policy thrust towards consistency, applicable by analogy. The revenue's failure to invoke or prove exceptions, such as lifting the corporate veil, leaves the assessee's claim unimpugned. The Assessing Officer's contrary view, classifying the surplus as business income, lacked sustainability in light of these binding circulars, which carry the force of law under section 119 of the Act. The Tribunal's decision to treat the surplus as long-term capital gains was thus justified. We answer substantial question (c) in the affirmative, i.e., against the revenue and in favour of the assessee.

16. Lastly, the revenue's assertion that Paragraph 3(b) of Circular No. 6/2016 dated February 29, 2016 was overlooked merits careful scrutiny. That provision

indeed addresses listed shares held for over twelve months, stipulating that if the assessee elects to treat the gains as capital in nature, the Assessing Officer shall not dispute such characterization, provided the assessee maintains consistency in its approach. However, the instant case revolves around unlisted preference shares, rendering Paragraph 3(b) inapposite. The governing directive is the CBDT Instruction dated May 02, 2016, which expressly applies to unlisted shares and mandates their treatment as capital gains, thereby obviating any grounds for dispute by the Assessing Officer.

17. Moreover, the revisional proceedings under Section 263 of the Act were not predicated on Paragraph 3(b) of the aforementioned Circular. The Principal Commissioner invoked entirely distinct reasoning in initiating revision, unconnected to the Circular's stipulations for listed shares. Consequently, the Income Tax Appellate Tribunal was only responsible for checking if the revision order was legally valid. It can't be blamed for not deciding on an issue that wasn't part of the revision order's reasoning. Expecting it to do so would wrongly force the Tribunal to go beyond what the order actually covered. We answer substantial question (d) in the affirmative, i.e., against the revenue and in favour of the assessee.

18. In view of the foregoing reasons recorded hereinabove, all the substantial questions of law framed at the time of admission of the appeal are answered in the affirmative, i.e., in favour of the assessee and against the revenue. We hold that the Income Tax Appellate Tribunal, "B" Bench, Kolkata, committed no error in setting aside the order passed under Section 263 of the Act and in restoring the assessment order. The Tribunal correctly appreciated the scope and ambit of Section 263 of the Act, the nature of enquiry conducted by the Assessing Officer and the applicability of the relevant CBDT Circulars governing the taxability of gains arising from transfer of shares.

19. Thus, the impugned order dated October 23, 2024 passed by the Income Tax Appellate Tribunal relating to the Assessment Year 2018-2019 does not warrant any interference under Section 260A of the Act. Accordingly, the appeal

filed by the revenue is dismissed and the application being GA 2 of 2025 is also dismissed.

20. There shall be no order as to costs.

21. Urgent certified copy, if applied for, be supplied upon compliance with requisite formalities.

(RAJARSHI BHARADWAJ, J)

(UDAY KUMAR , J)

Kolkata

20.02.2026
PA(BS)