

**आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1104/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2012-13)

Shri. Zahir Shabbir Kachwalla, F.No. 111, Silver Beach CHS, Off. V.S Marg Dadar, Mumbai 400028	<b><u>बनाम/</u></b>  v.	ITO 21(3)(5) Mumbai 400051
स्थायी लेखा सं./ PAN : AMYPK5755C		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:	Dr. K. Shivaram, Senior Advocate	
Revenue by :	Shri. T.A Khan, DR	

सुनवाई की तारीख /**Date of Hearing** : 24.07.2018

घोषणा की तारीख /**Date of Pronouncement** : 24.09.2018

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member:**

This appeal, filed by assessee, being ITA No. 1104/Mum/2017, is directed against appellate order dated 01.11.2016 passed by learned Commissioner of Income Tax (Appeals)-33, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2012-13, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 30.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for assessment year 2012-13.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

*"1. The learned CIT(A) erred in partly confirming order of A.O. treating investment in flat of Rs. 2,15,28,820/- as unexplained investment u/s. 69 without appreciating that assessee had given satisfactory explanation of source of investment being consideration received on sale of shares in current year and earlier year which shares were held in D-MAT account of assessee and hence entire addition made by learned A.O. to be deleted.*

*2. The learned CIT(A) erred in partly confirming order of learned A.O. treating investment in flat of Rs. 2,15,28,820/- as unexplained investment u/s. 69 without appreciating that S.69 is not applicable as source of investment is from sale of shares which were acquired in earlier years and hence entire addition made by learned A.O. deserves to be deleted.*

*3. The learned CIT(A) erred in confirming order of A.O. rejecting excess claim of exemption u/s.10(38) made in revised computation of income by wrongly observing that (i) appellant made a claim that the exemption was claimed in the revised return of income and (ii) revised computation was an act of deliberate attempt on the part of the appellant not to reveal full share transactions in his return of income without appreciating that grounds of appeal clearly stated revised computation of income and hence the excess claim may be allowed.*

*4. The learned CIT(A) erred in partly confirming order of A.O. treating shares purchased of Rs. 3,395/- from Motilal Oswal as unexplained investment without appreciating that Assessee had explained the nature and source of the same and hence the addition of Rs. 3.395/- ought to be deleted.*

*5. The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."*

3. The brief facts of the case are that the assessee is a salaried employee having income from salary, capital gains, interest and dividend income. The assessee made investments in new residential flat situated at Flat no. 103, Silver Beach, P.P Jambekar Marg, Dadar(West), Mumbai-400028 to the tune of Rs. 2,35,28,820/- during

previous year relevant to the impugned assessment year , out of the total cost of the said new flat being at Rs.3,20,00,000/- . It is stated that 75% of the ownership of the said flat vest with the assessee while rest 25% vest with father of the assessee. During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the 1961 Act ,the assessee was asked by the AO to explain the sources for making investment in aforesaid new residential flat. The assessee explained that assessee had made investments in the said new residential flat by selling shares for Rs. 2,25,78,513/- and raising loan from Ms. Shahida Kachwalla of Rs. 20,00,000/-. The assessee explained that all the income from salary, interest and dividend are deposited in bank account maintained by the assessee with Bank of Maharashtra which is stated to be the only bank account maintained by the assessee from which investments are also made. The assessee submitted that since he is salaried employee and is not doing any business, the assessee has not maintained any books of accounts. The assessee furnished copy of bank statements of his bank account with Bank of Maharashtra for financial year 2010-11 and 2011-12 before the AO . The assessee highlighted payment entries in the bank statement of Bank of Maharashtra for payments being made to Tata International Limited towards consideration for purchase of new residential flat in the financial year 2011-12 . The assessee also enclosed Index-II of the new flat purchased. The assessee also submitted copies of demat account statement for financial year 2010-11 and 2011-12 and it was explained that the share transactions for sale of shares were done through registered brokers and Securities Transaction Tax(STT) was duly paid on sale of shares which is reflected in the brokers note. The assessee explained that the demat account is maintained with Saraswat Co-operative Bank Limited which is the only demat account held by the assessee in which shares are held by the assessee. It was explained that the demat account as well bank account were duly disclosed to the Revenue in return of income filed by the assessee with Revenue. The assessee had explained that assessee held the share

which were acquired over a period of time by way of gift from his grandfather Late Dr. Yahyabhoy E. Kachwalla as per declaration made under sub-section 1 of Sec. 65 of the Finance Act 1997 in respect of Voluntary Disclosure of Income Scheme(VDIS) which was accepted by learned Commissioner of Income-tax , Mumbai. It was explained that the assessee also received gift of shares from his father Shri Shabbir Y. Kachwalla on 11-04-2008 which were transferred to his demat account with Saraswat Co-op. Bank Limited. The assessee produced copy of gift deed executed in his favour by his father before the AO. The copy of declaration made by grand father under VDIS was also filed. The assessee explained that dividend income was received for last several years on these shares which was credited to his singular saving bank account maintained with Bank of Maharashtra. It was submitted that till the assessee was minor i.e. upto AY 2004-05, the said dividend income as well shares was shown in the return of income of his father Shri Shabbir Y. Kachwalla , keeping in view provisions of Section 64 of the 1961 Act. It was submitted that during all these years, further investments were also made in shares out of accumulation of savings from dividend and interest income. It was submitted that on attaining majority in the year 2004, the assessee was having income below the taxable limits and hence no return of income was filed from AY 2005-06 till AY 2008-09. It was submitted that thereafter since AY 2009-10, separate return of income was filed by the assessee regularly with Revenue showing income from salary, interest, dividend and capital gains on sale of shares . It was submitted that out of old investments in shares, part of the investment was sold by the assessee and proceeds thereof were utilised for purchase of afore-stated new residential flat in the impugned assessment year. It was submitted that these are genuine share transactions and investment in new residential flat is fully explained as the sources were mainly from sale of shares. Since, there was some variation in the declared sale of shares and capital gains declared by the assessee in return of income , the assessee filed

revised statement of sale of shares and capital gains which resulted in increase of capital gain amount to Rs. 1,18,56,886.22 from the earlier declared capital gains of Rs. 1,14,41,084.24 but the AO did not accepted the said revised sale amount of shares as well revised capital gains as the same was not done by the assessee vide filing of revised return of income albeit was done by filing revised computation of income before the AO during assessment proceedings u/s 143(3) r.w.s. 143(2) of the 1961 Act . The assessee also explained that bonus shares were allotted as well new shares were purchased over a period of time and certain shares were also sold in the preceding years which were declared to Revenue in return of income filed with Revenue. The assessee claimed that dividend so received by the assessee from year to year is credited in the singular bank account maintained by the assessee with Bank of Maharashtra which has been declared in the return of income filed with the revenue . It is the claim of the assessee that the singular D-MAT account held by the assessee with Saraswat Co-operative Bank Limited in which all these shares were held was duly declared and disclosed to the revenue over a period of time as the dividend received on account of share held in this Demat accounts were duly declared and disclosed to revenue from time to time . Thus, it was claimed that all the share which were sold were declared and disclosed to Revenue over a period of time vide disclosure by way of declaration of dividend income earned on these shares as well bank account maintained with Bank of Maharashtra being disclosed to Revenue in the return of income filed with Revenue. The AO disbelieved the assessee and made addition to the tune of Rs. 2,15,28,820/- towards the investments made in the aforestated new residential flat after giving accepting explanation of source for making investment in new residential flat with respect to loan of Rs. 20,00,000/- received from Ms.Shahida Kachwalla . Thus, the AO did not accept explanation of the assessee so far as proceeds of sale of shares which were claimed to be utilised by the assessee for making

investment in new flat was disbelieved by the AO to the tune of Rs. 2,15,28,820/- , which falls within following broad categories:-

- (i) Receipt by way of gift from father and by way of VDIS declaration of grandfather of the assessee.*
- (ii) Shares purchased prior to AY 05-06 and dividend on those shares disclosed in Computation of Father as same was clubbed u/s 64 of the 1961 Act,*
- (iii) Shares purchased from AY 06-07 to AY 08-09 when no return of income was filed as income was claimed to be below taxable limit*
- (iv) Shares purchased after AY 09-10 wherein ROI was filed.*
- (v) minor discrepancy in computation of capital gains as well sale proceed of shares which was pointed by the AO and later corrected by assessee vide revised computation of income filed before the AO albeit not through revised return of income*

4. The assessee went in appeal before Ld. CIT(A) who granted partial relief to the assessee by allowing and accepting following sources for making investment in new residential flat being sale of shares as under:-

- (i) Sale consideration received on sale of shares acquired by assessee by way of gift from father and those declared in VDIS of grandfather of the assessee.*
- (ii) Shares purchased since AY 2009-10 provided it is brought on record by assessee that the same was earned from income earned and returned by the assessee. Incidentally the AO has not given relief under this clause while passing order granting appeal effect.*

The Ld. CIT(A), however did not gave relief on account of sale proceeds arising out of following as detailed hereunder:-

- (i) Shares purchased prior to AY 05-06 when the assessee was minor and it was claimed that income for those years when assessee was minor was clubbed with income of father u/s 64 . The learned CIT(A) also did not granted relief with respect to AY 06-07 to AY 08-09 on the grounds that the assessee has not filed return of income for AY 2006-07 to 2008-09*
- (ii) Shares sold in AY 11-12 and consideration of Rs 50,00,000/- invested out of said sales.*

6. The assessee has come in an appeal before the tribunal and it is submitted by Ld. Counsel for the assessee at the outset that ground no. 4 is not pressed. Prayer is made for dismissal of ground no. 4. The learned DR has not raised any objection to dismissal of ground no. 4. After hearing both the parties, we are of the view that the ground no. 4 raised by the assessee in memo of appeal filed with the tribunal be dismissed. We dismiss ground no. 4. We order accordingly.

7. With respect to ground no. 1 to 3 raised by the assessee in memo of appeal filed with the tribunal, it is explained by learned Senior counsel for the assessee that the assessee has not purchased any shares during the relevant assessment year, while the shares were all acquired/purchased in the preceding years by way of several modes such as gifts/inheritance from grandfather/father, fresh purchases from market/IPO as well bonus shares allotted by the companies. It was also explained by learned Senior Counsel that the assessee filed return of income consistently since AY 2009-10 onwards and our attention was also drawn to return of income filed by the assessee. It is also explained that the dividend income has been credited in the bank account of the assessee maintained with Bank of Maharashtra which was declared to the Revenue over a period of time. It was also submitted that the father of the assessee Mr. Shabbir Y Kachwalla was regularly filing return of income and these shares were declared by him in the return of income filed with the revenue till the assessee was minor keeping in view provisions of Section 64 of the 1961 Act. It was also explained by learned Senior Counsel for the assessee that with respect to shares gifted to the assessee by his father, the same were disclosed to Revenue prior to executing gift of these shares in favour of the assessee. It was explained that for AY 2005-06 to 2008-09, the assessee did not file return of income as there were no income chargeable to tax in these years and hence there was no requirement of filing return of income. It was also explained that AO

did not accepted revised computation of income incorporating the minor discrepancy in declaration of income as well consequently capital gains as pointed by the AO merely because the assessee filed revised computation of income instead of filing revised return of income during the course of assessment proceedings before the AO keeping in view decision of Hon'ble Supreme in the case of Goetze(India) Ltd. v. CIT reported in (2006) 284 ITR 323(SC) . It was submitted that the appellate authorities can always accept revised claim filed during the assessment proceedings vide revised computation of income while only AO is debarred from accepting the said claim which is not filed by way of revised return of income keeping in view decision of Hon'ble Supreme Court in the case of Goetze (India) Limited(supra) . The assessee relied upon decision of Hon'ble Bombay High Court in the case of CIT v. Pruthvi Brokers and Shareholders (2012) 349 ITR 336(Bom). The Ld. DR on the other hand submitted that Ld. CIT(A) has allowed the claim of the assessee so far as shares gifted by father as well given by grandfather which were declared under VDIS scheme. It was submitted that learned CIT(A) has given direction to the AO to consider and allow the claim of the assessee for shares acquired from AY 2009-10 onwards provided the assessee is able to bring on record that the shares were acquired out of income which was declared and disclosed to the Revenue. The learned DR would rely upon the appellate order of the Ld. CIT(A).The learned AO while passing order giving effect to learned CIT(A) appellate order has given relief to the assessee with respect to the shares gifted by father as well given by grandfather out of VDIS scheme. However, while passing order to give effect to appellate order of learned CIT(A), the AO did not grant relief to the assessee with respect to the shares which were acquired since AY 2009-10 onwards as were directed by learned CIT(A) to grant relief after verifying that income earned and disclosed to Revenue was utilised for making investments in shares in those years. The Revenue has not come in appeal before ITAT against relief granted by learned CIT(A) as neither

learned DR nor Senior counsel for the assessee could bring the said fact on record before the tribunal.

8. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee is salaried employee having income from salaries, capital gains, interest income and dividend income. The assessee is not maintaining any books of accounts as it is claimed that the assessee is not required to maintain books of accounts within mandate of the 1961 Act as there is no business income earned by the assessee. The assessee has claimed that it is maintaining singular bank account with Bank of Maharashtra being saving bank account and the said saving bank account is stated to be duly declared and disclosed to Revenue in the return of income filed over several years. It is claimed that all income earned by the assessee is credited to this singular saving bank account and similarly all investments as well expenditure are met from this singular saving bank account held by assessee in his name with Bank of Maharashtra . It is also claimed that the assessee is maintaining singular demat account with Saraswat Co-operative Bank Limited in which is held all the shares in electronic form. This demat account is also claimed to be duly declared and disclosed to Revenue as all shares purchased/acquired as well sold by the assessee are credited/debited in this demat account as well all dividend attributable to shares held by the assessee in this demat account are electronically credited in the singular bank account maintained by the assessee with Bank of Maharashtra which is linked to this demat account. It is claimed that declaration/disclosure of capital gains earned by the assessee as well dividend income earned by the assessee from year to year were made to Revenue by the assessee in the return of income filed with the Revenue for those respective assessment years. It is also pertinent to mention that till AY 2004-05, the assessee was minor and it is claimed that the assessee's income was clubbed with the income of father keeping in view

provisions of Section 64 of the 1961 Act. It is also claimed by the assessee that for the period AY 2005-06 till AY 2008-09, no return of income was filed by the assessee as it is claimed that the income of the assessee was below threshold taxable limits and hence it is claimed that there was no requirement of law for filing return of income with Revenue. It is also claimed that since AY 2009-10 onwards, the assessee's income was above taxable limits and hence the assessee was filing its return of income with Revenue. With this background, we proceed further to adjudicate this appeal. The assessee made investments in new residential flat situated at Flat no. 103, Silver Beach, P.P Jambekar Marg, Dadar(West), Mumbai 400028 to the tune of Rs. 2,35,28,820/- during previous year relevant to the impugned assessment year out of the total cost of the said new flat being pegged at Rs.3,20,00,000/- . It is claimed that the assessee held 75% of the share in the said flat while 25% share in the said new flat is held by his father. The assessee had explained that assessee made investments in the said residential flat by selling shares for Rs. 2,25,78,513/- and also by obtaining loan from Ms. Shahida Kachwalla of Rs. 20,00,000/-. The authorities below had accepted loan of Rs. 20,00,000/- raised by the assessee from Ms. Shahida Kachwalla as explained source for making investment in new flat and there is no dispute so far as sources for making investment in flat to the tune of this Rs. 20,00,000/- is concerned. The dispute had arisen between rival parties with regard to sources for making investment in new flat to the tune of Rs. 2,15,28,820/- which is stated to be raised by the assessee from sale of shares in the impugned assessment year to the tune of Rs. 1,67,40,371/- (later corrected by assessee to Rs. 1,72,85,949/- on being pointed by the AO through revised computation of income filed in assessment proceedings before the AO but not accepted by authorities below on the grounds that no revised return of income was filed by the assessee) as well as Rs. 50,00,000/- arising from sale of shares during the preceding assessment year again stated by the assessee to be from sale of shares

which sources were not accepted by the AO , as the AO disbelieved the purchases/acquisition of shares in the impugned year as well preceding years being unexplained sources, which fell broadly under following four heads as under:-

- (i) Shares Received by way of gift from father and declared under VDIS scheme by grandfather of the assessee.*
- (ii) Shares purchased prior to AY 05-06 and dividend on those shares disclosed in Computation of income of Father as same was clubbed u/s 64 until the assessee attained majority,*
- (iii) Shares purchased/acquired by assessee from AY 05-06 to AY 08-09 when no return of income was filed as income was stated to be below taxable limit*
- (iv) Shares purchased after AY 09-10 wherein ROI was filed by the assessee.*

The Ld. CIT(A) has , however, accepted contention of the assessee to the extent as under:-

- (i) Sale consideration received on sale of shares acquired by way of gift from father and those declared in VDIS by grandfather of the assessee.*
- (ii) Sale consideration of shares purchased from AY 2009-2010 onwards provided the assessee proves that the said shares were acquired out of income earned and declared by the assessee to Revenue.*

While the explanation provided by the assessee with respect to following sale proceeds arisen from sale of following shares were not accepted by Ld. CIT (A) and additions stood confirmed by learned CIT(A) , as under:-

- (i) Shares purchased prior to AY 05-06 when the assessee was minor . Further shares purchased from AY 05-06 to AY 08-09 on the grounds that no return of income was filed by the assessee despite attaining majority.*
- (ii) Shares sold in AY 11-12 and consideration of Rs 50,00,000/- invested out of said sale proceeds for acquiring new residential flat.*

The AO while giving appeal effect to the appellate order of learned CIT(A) has granted relief to the assessee so far as shares received as gift from father as well shares declared by grandfather under VDIS

scheme which were received by the assessee. The AO however did not granted relief to the assessee so far as shares acquired/purchased since AY 2009-10 onwards even though the assessee filed return of income for those years while learned CIT(A) directed AO to grant relief to the assessee if the assessee is able to demonstrate that the amount from which these shares were acquired/purchased represent income which stood declared to the Revenue. There is no incriminating finding by the AO in order giving appeal effect while the assessee is contending that these are the shares acquired in preceding years and the assessee has duly declared bank account as well the dividend earned on these shares on year to year basis to Revenue in return of income filed with Revenue. We are in agreement with the contention of the assessee as the assessee duly filed return of income for AY 2009-10 onwards and if the bank account from where these investments were made as well dividend declared/disclosed in return of income albeit exempt from tax was declared to the Revenue in return of income filed by the assessee for those years in which fresh acquisition/purchases were made as well in subsequent years , then there is no reason/justification for making any additions for the impugned assessment year under consideration before us. If any case if the Revenue wanted to make additions for such acquisition/purchases, nothing prevented Revenue from invoking provisions of Section 147/148 of the 1961 Act and the assessments could have been reopened but to burden the assessment of this year keeping in view factual matrix of the case is not warranted. It is also pertinent to mention that the AO framed assessment u/s 143(3) for the impugned assessment year on 30.03.2015 , while for AY 2009-10 onwards till AY 2011-12 the time limit for reopening u/s 147/148 has not expired till 30-03-2015 but the AO did not invoked provisions of Section 147/148 of the 1961 Act. Principally agreeing with the contentions of the assessee, we are remitting the matter back to the file of the AO for limited verification purposes and if it is found that fresh acquisition/purchases of shares in AY 2009-10 till AY 2011-12

were paid out from bank account of the assessee maintained with Bank of Maharashtra which was declared bank account as well the dividend income from these shares were declared and disclosed in the return of income filed with Revenue albeit dividend income was claimed exempt from tax , then the said additions as were made by the AO for fresh acquisition/purchases for the impugned assessment shall be deleted by the AO. We have also noted that the AO has stated that shares were received from some other demat account as transfer while the assessee is saying that the shares were received on transfer from broker after being purchased by the assessee for which payments were made by the assessee shall also be verified by the AO after referring to bank statements, demat account of the assessee and other relevant documents.

So far as the investment made in share for the impugned assessment year is concerned, it is claimed by the assessee that no shares were purchased, this contention of the assessee requires verification and matter is remitted back to the AO for necessary verification.

It is the claim of the assessee so far as shares acquired prior to attaining majority i.e. till AY 2004-05, the income arisen from these shares were clubbed with the income of father u/s 64 of the 1961 Act as well these shares were declared by father in his return of income filed with Revenue and after attaining majority, it is claimed that since income was below the taxable threshold limit, no return of income for AY 2005-06 to AY 2008-09 was filed . The assessee has claimed that since 2009-10 onwards, the dividend income arisen from these shares was regularly declared by assessee to Revenue from year to year in return of income filed with Revenue and hence the said shares cannot be classified as undisclosed investments, we agree in principle with the contention of the assessee that no addition is warranted for the impugned assessment year if the said shares were disclosed to Revenue from year to year in preceding years , wherein bank account

as well income arose from these shares by way of dividend were on record with the Revenue. The demat accounts are linked with bank account and the dividend etc is received electronically in the bank account linked with the demat account. The assessee has one bank account with Bank of Maharashtra and one demat account with Saraswat Co-operative Bank Limited. In any case if Revenue wanted to make additions on this count, it is the first year i.e. AY 2009-10 when declaration and disclosure was made for the first time for such shares, the additions could have been made by Revenue towards unexplained investment but not the year under consideration. Under these circumstances, the said shares cannot be classified as unexplained investments for the year under consideration before us. Principally agreeing with the contentions of the assessee, we are remitting the matter back to the file of the AO for limited verification purposes and if it is found these shares acquired by the assessee before attaining majority and dividend income from these shares were credited in saving bank account maintained with Bank of Maharashtra which was declared in the return of income filed with Revenue from year to year albeit dividend income was claimed exempt from tax, then the said additions as were made by the AO for shares acquired prior to assessee attaining majority shall be deleted by the AO as these investments were duly declared and disclosed investments. Similar is our finding and directions so far as shares acquired from AY 2005-06 to AY 2008-09 wherein the assessee did not file return of income owing to claim of income being below the threshold taxable limit as laid down under the 1961 Act. The assessee has claimed that since AY 2009-10 onwards, the dividend income arisen from these shares was regularly declared by assessee to Revenue from year to year in return of income filed with Revenue and hence the said shares cannot be classified as undisclosed investments, we agree in principle with the contention of the assessee that no addition is warranted for the impugned assessment year if the said shares were disclosed to Revenue from year to year in preceding years, wherein bank account

as well income arose from these shares by way of dividend were on record with the Revenue. The demat accounts are linked with bank account and the dividend etc is received electronically in the bank account linked with the demat account. The assessee has one saving bank account with Bank of Maharashtra and one demat account with Saraswat Co-operative Bank Limited. In any case if Revenue wanted to make additions on this count, it is the first year i.e. AY 2009-10 when declaration and disclosure was made for the first time for such shares, the additions could have been made by Revenue towards unexplained investment but not the year under consideration. Under these circumstances, the said shares cannot be classified as unexplained investments for the year under consideration before us. Principally agreeing with the contentions of the assessee, we are remitting the matter back to the file of the AO for limited verification purposes and if it is found these shares acquired by the assessee between AY 2005-06 to AY 2008-09 were declared to Revenue vide declaration of dividend income from these shares were credited in saving bank account maintained with Bank of Maharashtra which was declared in the return of income filed with Revenue from year to year thereafter since AY 2009-10 albeit dividend income was claimed exempt from tax, then the said additions as were made by the AO for shares acquired between AY 2005-06 to AY 2008-09 shall be deleted by the AO as these investments were duly declared and disclosed investments. The Revenue could have invoked provisions of Section 142(1) or 147/148 of the 1961 Act for those years when the said shares were acquired/purchased or could have made addition in the first year when the assessee disclosed said investment to Revenue i.e. AY 2009-10. Similarly we are of the view that the shares which were sold in immediately preceding year i.e. AY 2011-12 and against which sale proceed to the tune of Rs. 50,00,000/- was invested in the aforesaid new residential flat cannot be brought to tax for similar reasons for the year under consideration and similar directions as are issued by us in preceding para's of this order with respect to other

additions are issued for the purposes of limited verification by the AO. This issue is set aside to the file of the AO for necessary verifications. This leaves us with the issue of adopting corrected figure of sale of shares and capital gains arisen thereof as pointed by the AO which the assessee accepted and filed revised computation of income before the AO while no revised return of income could be filed by the assessee. The AO expressed inability keeping in view decision of Hon'ble Supreme Court in the case of Goetze (India) Limited (supra). The learned CIT(A) being appellate authority also did not accepted the correct figures of sale of shares as well capital gains arisen thereof. The mandate of the 1961 Act is to compute and collect correct income-tax which is supported by Article 265 of the Constitution of India. The AO was not entitled to accept the revised claim of income filed otherwise through revised return of income keeping in view aforesaid decision of Hon'ble Supreme Court in the case of Goetze (India) Limited(supra) but learned CIT(A) ought to have accepted the claim of the assessee to bring to tax correct income. This view is supported by decision of Hon'ble jurisdictional High Court decision in the case of Pruthvi Brokers and Shareholders(supra). Thus, we accept the contention of the assessee and let the correct revised figure of sale of shares be adopted. We order accordingly.

9. In the result appeal of the assessee is partly allowed for statistical purposes as indicated above.

Order pronounced in the open court on 24.09.2018.

आदेश की घोषणा खुले न्यायालय में दिनांक: 24.09.2018 को की गई ।

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 24.09.2018

Nishant Verma  
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI