Principal Commissioner of Income Tax-21, Mumbai v. Sarah Faisal Hawa

ID: F2J-C-2452 **Court:** Bombay High Court
Case: INCOME TAX APPEAL NO.2633 OF 2018 **Date:** 2026-03-12

[Cites 12, Cited by 0] Bombay High Court Pr. Commissioner Of Income Tax-21, ... vs Sarah Faisal Hawa on 12 March, 2026 HEMANT 2026:BHC-OS:6990-DB CHANDERSEN SHIV H.C. SHIV 72.ITXA2633.18.DOC Digitally signed by HEMANT IN THE HIGH COURT OF JUDICATURE AT BOMBAY CHANDERSEN SHIV Date: 2026.03.24 ORDINARY ORIGINAL CIVIL JURISDICTION 10:16:39 +0300 INCOME TAX APPEAL NO.2633 OF 2018 Pr. Commissioner of Income Tax-21, Mumbai ...Appellant Versus Sarah Faisal Hawa ...Respondent ___________________ Ms. Mamta Omle, Senior Advocate for the Appellant. Mr. Jitendra Singh with Mr. Rajesh Gaikwad for the Respondent. _______________________ CORAM : SUMAN SHYAM & SHYAM C. CHANDAK, JJ. DATED : 12th MARCH, 2026 P.C. :-

1. Heard Ms. Omle, learned Senior Advocate for the Appellant and Mr. Singh, learned Advocate for the Respondent.

2. This Appeal is filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the I.T. Act') challenging the Order dated 11/09/2017 passed by the Income Tax Appellate Tribunal, Mumbai in Income Tax Appeal No. 591/Mum/2017. The only substantial question of law projected in the memorandum of the Appeal, is as follows :- "(A) Whether on facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting tax income earned by the assessee from share transaction as income from business and considering the same as Long/Short Term capital gain by the assessee and setting aside revised the assessment of the CIT under Section 263 of Income Tax Act, 1961 ?"

3. The facts giving rise to this Appeal are that :- The Respondent-Assessee had filed her return of income for the Page 1 of 5 12th MARCH, 2026 ::: Uploaded on - 24/03/2026 ::: Downloaded on - 27/03/2026 22:14:35 ::: H.C. SHIV 72.ITXA2633.18.DOC Assesment Year 2008-09, declaring therein total income of Rs.2,63,94,060/-. She had claimed short term capital gain of Rs.2,45,79,770/- taxable at concessional rate under Section 111A and long term capital gain of Rs.7,40,19,132/- exempt from tax under Section 10(38) of the I.T. Act.

4. During scrutiny proceedings for the Assessment Year 2007-08, it was held that the assessee was engaged in business venture of in trading shares and therefore, the assessee's aforesaid claim to consider short term capital gain at concessional rate and long term capital gain with exemption was not found to be in order. As such, the income was brought to tax as business income.

5. As a consequence of the same, proceedings under Section 148 of the I.T. Act were initiated for scrutiny assessment on the similar lines and following the findings in Assessment Year 2007-08 and to bring to tax, the income escaping assessment. The Assessing Officer, accepted the returned income Vide Order dated 30/11/2011, passed by the ACIT-21(3), Mumbai for the Assessment Year 2008-09.

6. Holding the said Order of the Assessing Officer as erroneous and prejudicial to the interest of the Revenue, the CIT-17, Mumbai passed an order under Section 263 dated 23/11/2012 directing the Assessing Officer to bring to tax, income earned by the assessee from share transaction as income from business instead of Long/Short Term capital gain claimed by the assessee and to revise the assessment accordingly. The Assessing Officer was also directed to initiate appropriate penalty proceedings.

7. The Order dated 08/02/2013 was, thereafter, passed thereby giving effect to the Order dated 23/11/2012 passed under Section 263 of the Act, thus determining the total income at Rs.10,46,03,370/-. The ITAT had Page 2 of 5 12th MARCH, 2026 ::: Uploaded on - 24/03/2026 ::: Downloaded on - 27/03/2026 22:14:35 ::: H.C. SHIV 72.ITXA2633.18.DOC upheld the Order passed under Section 263 to the extent that the reassessment order of the Assessing Officer was found to be erroneous and prejudicial to the interests of the Revenue. However, it had interfered with the Order under Section 263 with respect to the direction to make the impugned additions.

8. Accordingly, the scrutiny assessment proceedings were initiated by the Assessing Officer and necessary Order dated 31/03/2015 was passed under Sections 143(3) and 254 of the I.T. Act thereby holding that the share trading income was the business income. The assessee preferred an Appeal bearing CIT(A)-33/Rg.21/364/2015-16 assailing the Order dated 31/03/2015. Said Appeal was dismissed vide Order dated 02/11/2016.

9. Being aggrieved, the assessee took up the matter before the ITAT, Mumbai bearing Income Tax (Appeal) No.591/Mum/2017 impugning the orders dated 23/11/2012 and 08/02/2013. The Appeal was partly allowed by the Order dated 11/09/2017, which is impugned in this Appeal.

10. It was contended on behalf of the Assessee that, treating the short term capital gain amounting to Rs. 2,45,79,767/- as 'Business Income', was unjustified. Addittionally, the treatment of long term capital gain amounting to Rs. 7,40,19,132/- as 'Business Income' was equally unwarranted in the facts.

11. While dealing with these grounds, the ITAT observed that the assessee was allowed capital gain for Assessment Year 2007-08 on the basis of which the learned PCIT revised the assessment order passed under Sections 143(3) read with 147, directing the Assessing Officer to treat the capital gain as business income. Further, the Assessing Officer allowed the capital gain for the Assessment Year 2014-15 in assessment order passed under Section Page 3 of 5 12th MARCH, 2026 ::: Uploaded on - 24/03/2026 ::: Downloaded on - 27/03/2026 22:14:35 ::: H.C. SHIV 72.ITXA2633.18.DOC 143(3) dated 26/11/2016. There was nothing irregular in the income shown by the assessee when she had filed her relevant returns. On the contrary, the income shown therein was supported by the relevant entries in bank account and DEMAT account as well as the books of account. In view thereof, following the principle of consistency, the learned ITAT allowed appeal by accepting both the aforesaid grounds taken in the appeal.

12. It was contended on behalf of the assessee that the addition on account of dividend stripping under Section 94(7) of the Act was unjustified.

13. While considering this ground, the ITAT has observed that the learned CIT(A) had noted that during the proceeding under Section 263 of the I.T. Act, the learned PCIT had analyzed the stripping and confirmed the disallowance. However, it was observed that the Assessing Officer disallowed the dividend without verifying the fact. The Assessing Officer made the addition only on the observation of learned PCIT. The Authorized Representative of the assessee had placed on record the copy of statement showing the record and date of scripts. Considering the fact that the assessee had provided the specific details of shares of M/s. Kamala Dials and M/s. Hemadri Chemicals before the Assessing Officer. The ITAT restored this ground of appeal to the file of Assessing Officer, and directed to verify the facts and pass the Order in accordance with Law. The learned ITAT also observed

that, Assessing Officer shall provide an opportunity to the assessee before passing the order. In the result this ground of appeal was allowed but only for statistical purpose.

14. It was contended by the assessee that addition under Section 68 of the Act treating the advance received from friend as unexplained cash credits was unjustified. The said addition was Rs.40,00,000/-. Page 4 of 5 12th MARCH, 2026 ::: Uploaded on - 24/03/2026 ::: Downloaded on - 27/03/2026 22:14:35 ::: H.C. SHIV 72.ITXA2633.18.DOC

15. In this context, the Appellate Authority observed that the assessee had placed copy of ledger account, confirmation of account, bank statement and statement recorded under Section 131 of certain entities. However, these documents were not considered. Therefore, the said ground was also accepted for statistical purpose only holding that it would be proper to restore the Appeal to the file of the Assessing Officer to consider the facts afresh and pass Order after verification of the evidences, in accordance with law.

16. For similar reasons, the contention of the assessee was also accepted that the addition of Rs.1,75,000/- on account of low withdrawal was without appreciating the facts and circumstances of the case.

17. Ms.Omle, the learned Senior Counsel has also submitted that the view taken by the ITAT is in line with the decision of this Court rendered in the case of Principal Commissioner of Income Tax-21 vs. Smt. Sarah Faizal Hawa dated 30th January, 2018 passed in Income Tax Appeal No.837 of 2015 (Coram : M.S. Sanklecha & Riyaz I. Chagla, JJ.) and therefore, the substantial question of law urged in this appeal, no longer survives for consideration of this Court. The said submission couldnot be denied or disputed by the learned Counsel for the Revenue.

18. In view of the above and considering the submissions made by the Appellant's Counsel, as noted above, this Appeal stands disposed of in aforesaid terms.

19. No order as to cost. (SHYAM C. CHANDAK, J.) (SUMAN SHYAM, J.) Page 5 of 5 12th MARCH, 2026 ::: Uploaded on - 24/03/2026 ::: Downloaded on - 27/03/2026 22:14:35 :::