5. **GROUND No.1** :- In this ground the contention raised is that the LAO erred in law and on facts in treating a sum of Rs. 80,77,459/- being sale proceeds of investment share as business income at Rs. 59,884/- against business loss shown by the assessee at Rs. 4,59,992/-.

6.1 **OBSERVATION OF THE A.O.** :- The AO observed that the assessee had given thousands of shares of different scripts to her share management agent namely Franklin Templeton for sale and purchase of various shares. Accordingly, Franklin Templeton had sold thousands of shares of different scripts on behalf of the assessee and received sale proceeds of Rs. 91,46,674/- from sale transactions which has been shown as sale of shares as assessee's business income in the P&L A/c. The AO also observed that the shares in question were not purchased by the assessee but received by her from her uncle-in-law and had not incurred any expenses for acquisition of the said shares and therefore, the sale proceeds of Rs. 91,46,674/- is a straightway profit. Since the cost of acquisition of share was Nil, the entire sale proceeds of Rs. 91,46,674/- should be taxed. The ratio of principle of the Authority for Advance Ruling (AAR) (228 ITR 641) is entirely applicable in the case of the appellant. The assessee fall entirely engaged in the business of the trading of share and sale proceeds of Rs. 80,77,459/- on sale of unexplained share is considered as business receipts of the assessee.

6.2 **SUBMISSION OF THE A.R.** :- **Addition of Rs.80,77,459/- being sale proceeds of shares** : The appellant has received shares in heritance from Mahendra Prasad G. Bhatt who was her father-in-law. The appellant has filed a copy of registered will of Late Shri.. C.D. Bhatt. In para (2) of the said will, important facts regarding entire family have been stated. Accordingly, (1) - Shri. Dahyabhai Vishwanath Bhatt is a father of Shri.. C.D. Bhatt and (2) Shri. Girjashankar D. Bhatt brother of Shri. Dahyabhai Bhatt was expired in the year 1930 and Shri. Girjashankar Bhatt was expired in the year 1971. There was no son of Shri. C.D. Bhatt. He made will again on Dt.20/6/1989 wherein Shri. Mahendra Prasad G. Bhatt was declared as beneficiary. Shri. C.D. Bhatt expired on Dt.22/2/1996 and Shri. Mahendra Prasad Bhatt was expired on Dt.2/7/2002 leaving behind him (i) Mrs. Vanuben - his wife, (ii) Sureshbhai and Kalpanaben, (iii) Nalinbhai and Nitaben, (iv) Hemantbhai and Belaben, being his successors. Shri.. Mahendra Prasad Bhatt has distributed his moveable and immovable properties amongst his family members. As stated earlier, the appellant is also one of the legal heir and close relative, she also received movable assets from Shri.. Mahendra Prasad Bhatt. She has been holding shares of Indian companies since year 2002. She has also acquired some stock out of dividend and interest income. I am filing herewith a copy of stock holding statement of Smt. Kalpanaben S. Bhatt as on Dt.30/3/2007 issued by Stock holding Corporation of India Ltd. of Navsari with whom shares were held in demate account. I am also filing an affidavit of Mrs.Vanuben M. Bhatt duly signed and notorised. It is also necessary to bring to Your Honour's notice that in the case other two members of the same family i.e. Mr. Nalinchandra Mahendra Prasad Bhatt [PAN- ALDPB9203C]and Mr. Hemant M. Bhatt [ACPPB1276N], both are brother-in-laws of the appellant, on similar facts, claim of LTG is accepted by the same A.O in same year. However in the case of appellant, he is not accepting similar claim and has taxed entire sale proceed of shares held as investment by the appellant for more than a year. Copy of Assessment Order of both these assessees are enclosed herewith. The reasons quoted by the A.O. are -- 1) cost of acquisition of shares is Nil and (2) the appellant has entered numerous transactions in share trading activity during the year and (3) source of acquisition of shares is not proved.

6.3 Further the ld. AR submitted that the appellant has acquired shares since long back in the past. When shares are received in gift or through will or as inheritance, then cost incurred by previous owner is a cost of acquisition to such recipients and therefore it cannot be said that there was no cost of acquisition for shares sold by the appellant. Further, when the fact of holding of shares in earlier years as investment is accepted by the Department and there is no change in nature of investment in the year

OFFICE OF THE
COMMISIONER OF INCOME -TAX (APPEALS), VALSAD.
Ashish Building, 1st Floor, Room No. 1,
Narandas Patel Marg, Behind Madanwad, Valsad, Gujarat.

Appeal No. CIT(A)/VLS/242/10-11 Date of Order : 26.08.2011

Instituted on 19.01.2011 from the order of the I.T.O.,Ward-2,Navsari.

1.	Assessment Year	:	2008-09
2.	Name of Appellant	:	Smt. Kalpanaben Sureshbhai Bhatt, 68, Par Falia, Navsari.
3.	Total income assessed	:	Rs. 80,67,090/-
4.	Tax/Penalty/Fine imposed	:	Rs. 36,23,700/-
5.	Section under which the order appealed was passed	:	U/s. 143(3) of the I.T.Act.
6.	Date of hearing	:	As per records.
7.	Present for the Appellant	:	Shri..P.K.Shah & B.H.Shastry, ITP
8.	PAN of the appellant	:	ACNPB 7045H
9.	Present for the Department	:	None.
10.	Name & Designation of the Assessing Officer	:	S.K. Pardeshi, ITO,Wd-2, Navsari.

APPELLATE ORDER WITH GROUNDS OF DECISION

आयकर आयुक्त (अपील्स) वलसाड

1. This appeal is directed against the assessment order dated 28.12.2010, passed u/s.143(3) of the Act, 1961 by the I.T.O.,Ward-2, Navsari for the Asst. Year 2008-09.

2. In response to the notice of hearing, Shri P.K.Shah, CA and B.H.Shastry, ITP the duly Authorized Representatives of the appellant attended and discussed the case. The written submission filed is placed on record.

3. **FACTS OF THE CASE** :- The appellant is doing business of share trading through Franklin Templeton Asset Management (I) Pvt. Ltd. The appellant also sold share through other brokers. The appellant filed her return of income on 19.09.2008, declaring total income at Rs. NIL. The said return was processed u/s. 143(1) of the Act without any change to the income returned. Thereafter, the case was selected for scrutiny assessment u/s. 143(3) of the Act. While completing the assessment u/s. 143(3) of the Act ,the AO made addition on account sales proceeds considered as business income of the appellant amounting to Rs.80,77,459/- and determined the total income at Rs.80,87,090/-. Against this addition the appellant has filed appeal before me.

4. **GROUNDS OF APPEAL** :- The appellant raised the following five grounds of appeal, the essence of which of which is narrated below ; -

(1) The LAO erred in law and on facts in treating a sum of Rs. 80,77,459/- being sale proceeds of investment share as business income at Rs. 59,884/- against business loss shown by the assessee at Rs. 4,59,992/-.

(2) The LAO erred in law and fact in initiating penalty proceedings u/s. 271(1)© of the Act.

(3) The LAO erred in law and on facts in directing the appellant for making payment of outstanding dues for Rs. 36,23,700/- within the period of 30 days without considering nature of demand ignoring CBDT Circular and also overlooking decisions from various courts.

(4) The appellant craves right to add, amend, alter, delete and/or modify all or any of the above grounds of appeal.