Holding period of shares, on which LTG is claimed, is one or more year old is also accepted by the A.O. And on other hand, he is taxing entire sale proceeds of Rs.80,77,459/ as business income. There is no colourful device adopted by appellant because there is a clear provision in the Act regarding short term capital assets and long term capital assets as well as LTG and STG are made in Section 2(29A), 2(42A), 2(29B) and 2(42B) of I.T. Act,1961. And accordingly the appellant has correctly worked out LTG on shares held by her for more than one year's period. The stand of the A.O. that sale proceeds of shares are again reinvested to purchase another shares is not relevant for the two reasons i.e. (1) investment shares were held more than one year and (2) reinvestment shares' profit is already offered and taxed as business profit. Thus, in treating income either capital gain or business, important thing is, " holding period of assets " and not " frequency of transactions." In this connection, I am relying on Hon. CBDT's Instruction No.1827 dtd.31/8/1989. There are numerous judgements on the said issue including latest judgment of ITAT, Ahmedabad in the case of Shri. Sugamchand C. Jain V/s ITO ACIT (2010) 33(II) ITCL 650 wherein Honourable Tribunal has held that if shares are held for a period of more than one years than income should be taxed as LTG. If shares are held for a period of more than months but less than year, then income should be treated as STG. And if holding period is less than one months then income should taxed as business income. In this case also the assesses has carried out numerous transactions of shares.

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The ld. AR submitted that in another case Paresh D. Shah V/s JCIT, (2010) 2 ITR (Trib.)311, Hon.'ble Mumbai ITAT has held, " the assessee was carrying on business of trading in shares as well as investment in shares. Both these activities were done in the past and the profit on account of trading was shown as business income and profit on account of investment was shown as STG or LTG. During the year the assessee has stopped trading activities and a major portion of the stock was sold during the year under consideration and the business profit was offered for taxation. The stock was transferred to under consideration, prior to sell of such shares, then income from sell of shares to be treated as LTG and not business income. Reliance is placed on Suresh Kumar Seksaria V/s. ACIT - 1 ITR (Trib.) 783.

6.4 Further auditors' remark in Schedule-F i.e. Notes Forming Parts of Accounts at Sr. No.-4," the assessee has given her investment of shares to sell and later on the share proceeds was converted to handle PMS through Franklin Templeton Assets Management (India) Pvt. Ltd. (The Company) so, the initial sell of shares is treated as Long Term Profit / Loss."

3.(3) The appellant has held two portfolios-(1) for investment and (2) for trading purpose. The shares which held by her more than one year period, were kept as an investment, however shares in respect of which frequent transactions were made, were treated as stock-in-trade. The fact is also accepted by the A.O. in para-(9.3) of his Assessment Order which is hereunder –

" It is true that the assessee has made two divisions i.e. business income and capital gain. But the assessee by colourful device taken the sale proceeds of old shares to her PMS for trading of shares to earn profit and not for investment. More important that the source of investment of these shares are also unexplained as discussed above and therefore these shares were considered by the assessee for LTG as it is exempt u/s 10(38) of the Act. If the sale proceeds of those shares which are for one or more years old, would be taken or credited to P&L A/c, the profit would have enhanced by Rs.80,77,459/- because, these shares were having cost of acquisition as nil or face value is very low."

Thus, the ld. AR pleaded that, on one hand, the A.O. has accepted the fact that the appellant has maintained two portfolios and also kept separate records. She has also given full details not only in audited accounts but also detailed working and evidences were produced in assessment proceedings.