6.3 **DECISION** :- I have carefully considered the observations of the AO in the assessment order as well as the contentions raised by the AR of the appellant. The fact of the case was that the appellant inherited certain shares and sold them through 3 Brokers. The AO observed that the share sold by the appellant was with profit motive. Further, the finding of the AO indicated in the assessment order was that the entire sales proceeds falls under the category of business income. Although, he had accepted the shares were held for more than a year but because the transactions are repetitive, the sales of share be assessed as business income instead of Capital Gain. It is apparent that the AO had mixed up the transactions of shares with the 3 brokers and the PMS maintained with Franklin Templeton. To set the matter on clear perspective, the appellant had routed inherited shares for sale through 3 Brokers namely, Franklin Templeton, Stock Holding Corporation and Gandhi Securities & Investment Ltd. Majority of the shares were sold through Franklin Templeton i.e. ₹. 73,31,215/- and balance of ₹.6,59,727 & ₹. 46,851/- were sold through Gandhi Securities & Investment and Stock Holding Corporation respectively. Thus the total sales consideration of the inherited shares was ₹.80,37,795/-. Out of which the appellant did spend ₹.10,00,000/- from Franklin Templeton and the entire amount from Gandhi Securities and Stock Holding. The appellant stated that the balance amount from Franklin Templeton i.e. ₹.63,31,215/- (73,31,215 – 10,00,000) was used for PMS with Franklin Templeton. The Portfolio Manager did purchase and sale of shares on behalf of the appellant and incurred a loss of ₹.4,59,992/-. In other words, the appellant incurred loss of ₹.4,59,992/- from the PMS with Franklin Templeton. The appellant claimed that profits from the sale of share is Long Term Capital Gain and exempted u/s.10(38) of the Act. However, the AO held that the shares were inherited by the appellant and the cost of acquisition of those shares was Nil and therefore, the entire sale proceeds was business profits and should be taxed as business income and not capital gain. As seen above the undisputed facts are that the appellant inherited shares which was held for more than a year was sold for a consideration of ₹.80,37,795/- -

investment was sold in subsequent year. There was no ban on carrying out both the activities, trading in shares and investment in shares together. Whatever sales were made that were on account of investment, the details were placed on record. Therefore, the capital gains offered on account of sale of investment was correct and the assessing officer should have accepted it. The AO was to consider the profit shown on account of sale of investment as STG or LTG as the case may be."

Applying the ratio of Hon. CBDT's instruction and Court's decision, there is nothing wrong in making computation of income under the head capital gain, by the appellant and therefore, huge addition of Rs.80,77,459/ is prayed to be deleted.

3.4 - **Regarding source of acquisition of shares**, it is respectfully submitted that there is no evidence on record that the appellant has purchased/ acquired these shares in the year under appeal. On the contrary in para(9.3), page-18 , A.O. has stated that shares held by the appellant is for one or more years' old. And therefore, even if source is not accepted to the A.O; then addition u/s 69 is required to be made and that is also in the year of acquisition. But it cannot be treated as business income for the year under appeal.

In view of the above, the AR of the appellant submitted that there is no evidence on record that the appellant has purchased/ acquired these shares in the year under appeal. On the contrary in Para-9.3 on Page-18 of the assessment order, the A.O. stated that shares held by the appellant is for one or more years' old and therefore, even if source is not accepted by the A.O., then addition u/s. 69 of the Act is required to be made and that is also in the year of acquisition but it cannot be treated as business income for the year under appeal.