8. **GROUND No.3 :-** This ground is for stay of demand. The Appeal is decided on merit and this ground becomes infractuous and hence **dismissed.**

9. **GROUND No.4 :-** The contentions raised in Ground No. 4 is general in nature and therefore, the same does not merit separate adjudication.

10. In the result, the appeal is **partly allowed.**

आयकर आयुक्त (अपील्स)
वलसाड

(D.S.BENUPANI, IRS)
Commissioner of Income-Tax (Appeals)
Valsad.

Copy to :

[1] The CIT, Valsad(In duplicate).
[2] The Assessing Officer.
[3] The Assessee with demand notice.

Form-I. T. S. - 7

Notice of Demand under Section 156 of the Income-tax Act, 1961

Status: Individual

PAN/GIR No. ACNPB7045H

To

Smt. Kalpanaben Sureshbhai Bhatt
68, Parsi falia
Navsari Dist. Navsari

33/8
1 or 11

1. This is to give you notice that for the assessment year 2008-09 a sum of Rs. 3623700/-, details of which are given on the reverse, has been determined to be payable by you.

2. The amount should be paid to the Manager, authorised bank/State Bank of India,/Reserve Bank of India at Navsari within Thirty days of the service of this notice. The previous approval of the Deputy Commissioner of Income-tax has been obtained for allowing a period of less than 30 days for the payment of the above sum. A challan is enclosed for the purpose of payment.

3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one and one-half per cent for every month or part of a month from the date commencing after end of the period aforesaid in accordance with Section 220(2)

4. If you do not pay the amount of the tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with Section 221.

5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with Sections 222 to 229, 231 and 232 of the Income-tax Act, 1961.

6. If you intend to appeal against the asssessment/fine/penalty, you may present an appeal under Part A of Chapter XX of the Income-tax Act, 1961, to the Deputy Commissioner (Appeals) of Income-tax/Commissioner of Income-tax (Appeals)within thirty days of the receipts of this notice, in Form No. 35, duly stamped and verified as laid down in that form.

7. The amount has become due as a result of the order of the Deputy Commissioner(Appeals) of Income-tax/ Deputy Commissioner of Income-tax/Commissioner of ~~Income-tax~~ (Appeals)/Chief Commissioner or Commissioner of Income-tax Valsad under section .... of the Income-tax Act, 1961. If you intend to appeal against the aforesaid order, you may present an appeal under Part B of Chapter XX of the said Act to the Income-tax Appellate Tribunal .... within sixty days of the receipt of that order, in Form No. 36,duly stamped and verified as laid down in that form.

(S.K. PARDESHI)
Income-tax Officer Wd-2,Navsari

Assessing Officer

Address

Place: Navsari

Date: 2/12/2010

OFFICE OF THE INCOME TAX OFFICER WARD-2, NAVSARI

NOTES :

1. *Delete* inappropriate paragraphs and words.
2. If you wish to pay the amount by cheque, the cheque should be drawn in favour of the Manager, authorised bank/ State Bank of India/Reserve Bank of India.
3. If you intend to seek extension of time for payment of the amount or propose to make the payment by instalments, the application for such extension, or as the case may be, permission to pay by instalments, should be made to the Assessing Officer before the expiry of the period specified in paragraph 2. Any request received after the expiry of the said period will not be entertained in view of the specific provisions of Section 220(3).

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Assessed Income 8067090

Tax @30% 2369127

Surcharge @10% 236912

education cess & S.H.E.C @ 3% 78181

2684220

234A

01-08-08 to 29/08/08 (2)(M)

2684220 x 2 x 1% = 53684

234B

01-04-08 to 27/12/10 = 33 (M)

2684220 x 33 x 1% = 885796

Net payable 3623700/-

According to the appellant the LTCG was ₹.7,65,808/- after deduction the cost of shares inherited by the appellant. The main contention here was that the AO treated sales of shares of ₹.80,37,795/- as business income. Secondly, the AO made upward adjustment of value of closing stock of shares. The appellant's contention was that the profits from the inherited shares is LTCG and exempted u/s.10(38) of the Act because the shares were held for more than a year. The AO also held that entire sale consideration was business income as the cost of acquisition was nil. The appellant contended that the value of the shares before inheritance be taken as the cost of shares and accordingly worked out LTCG of ₹.7,65,808/-. With regards to the upward revision of value of closing stock, the ld. AR contended that since this is the first year and he has no objection to the upward revision of value. I have considered the facts and circumstances of the case carefully. The main issue is that the AO got confused with the trading of shares through PMS Franklin Templeton and the actual sale of inherited shares through Franklin Templeton. Now it is very clear that the appellant first sold the inherited shares through 3 Brokers and major part of the sale proceeds was invested through PMS with Franklin Templeton. Small portion of sales consideration was spent by the appellant. It has also clearly brought that the PMS with Franklin Templeton has resulted in loss. I have not dealt with the cost of acquisition of inherited shares because it has revenue-neutral in this case as the entire profit is LTCG and exempted u/s.10(38) of the Act. In this circumstances, the addition made by the AO is not legally sustainable and accordingly, the AO is directed to delete the addition. This ground of appeal is **allowed.**

7. **GROUND No.2** :- This ground is regarding initiation of penalty proceedings u/s. 271(1)(c) of the Act. Initiation of penalty cannot be a ground of appeal as the appellant will get sufficient opportunity to argue against the levy of penalty proceedings. This ground of appeal is, therefore, **dismissed** as premature.