IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H" MUMBAI

BEFORE SHRI B.R. MITTAL, JUDICIAL MEMBER

AND

SHRI RAJENDRA, ACCOUNTANT MEMBER

ITA No. 7769/Mum/2010
Assessment Year 2007-08

HSBC Global Investment Funds – BRIC Freestyle (now known as HSBC Global Investments Fund BRIC Equity) C/o. BSR & CO. CA, Lodha Excelus, 1st Floor, Apollo Mills Compound, N.M. Joshi Marg, Mahalakshmi, Mumbai – 400 011. PAN: AABCH 5462 K	Vs.	Asst. Director of Income Tax (International Taxation) – Range 3(1), Mumbai Scindia House, 1st Floor, N.M. Road, Ballard Pier, Mumbai-400 038.
(Appellant)		**(Respondent)**

Assessee by	:	Shri Niraj Sheth
Revenue by	:	Shri N.K. Mehta
Date of hearing	:	25-07-2012
Date of pronouncement	:	01-08-2012

ORDER

PER RAJENDRA, A.M.

Following Grounds of Appeal were filed by the Appellant against the order passed u/s. 143(3) r.w.s. 144 (c) 13 of the Income Tax Act, 1961 (Act) dated 03-09-2010 of the CIT(A) DDIT (IT) – (3)(1), Mumbai:

1.On the facts and in the circumstances of the case, the learned Assistant Director of Income-tax (International Taxation)-3(1), Mumbai (hereinafter referred to as 'the ADIT') erred in proposing and the Hon'ble Dispute Resolution Panel (DRP) has erred in confirming the proposed action of the ADIT in denying the adjustment of set-off of short-term capital loss suffered by HSBC Global Investment Funds —Bric Freestyle (hereinafter referred to as 'the Appellant') on sale of shares "on market" where STT (STT) was paid against the short-term capital gains arising on sale of shares "off market" where no STT was paid.

2. In the order dated 3 September 2010 passed under section 143(3) read with Section 144C(13) of Income-tax Act, 1961 ('the Act'), the ADIT has erred on facts and in law in raising a demand of Rs. 11,328,872 payable by the Appellant.

3. The ADIT erred in denying the adjustment of set-off of short-term capital loss suffered on sale of shares "on market" where STT was paid against the short-term capital gains arising on sale of shares on "off market" where no STT was paid and taxed the short-term capital gains of Rs. 150,439,719 arising on sale of shares on "off market" @30%.

The Appellant prays that the short-term capital loss suffered on sale of shares whether subject to STT or not can be set-off against short-term capital gains arising on sale of any other shares for the assessment year.

4. The Appellant craves leave to add to, alter, amend or withdraw all or any of the grounds of appeal herein above at or before the hearing of this appeal.

2. Assessee-company, a sub account of HSBC Global Investment Funds, filed its return of income on 29.10.2007 declaring total income of Rs. 3,70,48,39,662/-. Assessment order was passed u/s.143 (3) of the Act on 03.09.2010 determining the total income at Rs.3,70,48,39,662/- i.e. the returned income. But, certain adjustments were made by the Assessing officer (AO) while passing the order in pursuance of directions issued u/s.144(5) of the Act by the Dispute Resolution Panel-II, Mumbai.

3. Though there are three grounds of appeal, yet the effective ground is about denying the adjustment of set-off of short-term capital loss suffered by the assessee-company on sale of shares on market where Security Transaction Tax (STT) was paid against the short-term capital gains arising on sale of shares off market where no STT was paid.

4. During the assessment proceedings it was found by the AO that in its computation of income, the assessee had claimed set off of Short-term Capital Loss of Rs. 64,16,96,358/- (subjected to STT and therefore liable to be taxed @ 10%) against the Short-term Capital Gains on open offer of Rs. 15,04,39,719/-(not subjected to STT and therefore liable to be taxed @ 30%). He was of the opinion that the assessee's claim of set off of STCL(liable to be taxed @ 10%) against STCG (liable to be taxed @ 30%) was not proper as per the specific provisions of the Act. Vide order sheet entry dated 19.11.2009 he asked the assessee as to why it's claim of set off of STCL of Rs. 64,16,96,358/-(subjected to STT and therefore liable to be taxed @10%) against the STCG on open offer of Rs.15,04,39,719/- (not subjected to STT and therefore liable to be taxed @ 30%) should not be disallowed and the STCG on open offer of Rs. 15,04,39,719/- be not taxed separately @30%.After considering the submissions of the assessee AO held that in the case under consideration, as per the provisions of Sec.70(2) of the Act, assessee was not entitled to set off.

5. Before us (AR) submitted that STCL arising on sale of shares whether subject to STT or not can be set off against STCG arising on sale of any other shares, that section 70(2) of the Act are not prohibit such set off. He further stated that the matter was covered in favour of the assess by the decisions delivered by the Tribunal in the cases of First Date Investment (33SOT26-Mum) and M/s. HSBC Global Emerging

Markets Equity Fund, HSBC Indian Equity Mother Fund (ITA No. 5042-5043/Mum/2010-AY.2007-08, dtd.23.09.2011). DR fairly admitted that matter is covered in favour of the assessee-company and the facts are identical in the appeal under consideration.

6. We have heard the rival submissions. As the issue before us is already decided by the earlier judgments of Mumbai Tribunal,so,we have no hesitation in deciding Ground No.1-4 in favour of the assessee.

Respectfully following the decisions of First Date Investment, M/s. HSBC Global Emerging Markets Equity Fund and HSBC Indian Equity Mother Fund (supra), we allow the appeal filed by the assessee-company.

Order pronounced in the open court on 1st August, 2012.

Sd/-	Sd/-
(B.R. MITTAL)	**(RAJENDRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai,
Date 1st August, 2012

TNMM

Copy to:

1. Assessee
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR “H” Bench, ITAT, Mumbai
6. Guard File

(True copy)

By Order

Asst. Registrar,
Income Tax Appellate Tribunal,
Mumbai Benches, Mumbai