HIGH COURT OF JUDICATURE AT BOMBAY



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.300 OF 2014**

Commissioner of Income
Tax-16, Mumbai .. Appellant.
Vs.
Sadanand B. Sule .. Respondent.

Mr. A.R. Malhotra with Mr.N.A. Kazi for the appellant.
Mr. J.D. Mistri, Senior Advocate with Mr.Niraj Sheth i/b Mr. Atul Jasani for the respondent.

**CORAM : M. S. SANKLECHA &**
**A.K. MENON , JJ.**

**DATED : 2ND AUGUST, 2016**

**P.C. :**

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) impeaches the order dated 7th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. This appeal raises the following questions of law for our consideration :-

> *"(i) Whether, on the facts and the circumstances of the case and in law, the Tribunal was justified in allowing the claim of Long Term Capital Gain ignoring the fact that the cost of Acquisition of Shares was not proved by the assessee for claim for total purchase of 1665 shares of M/s.Lavassa Corporation Limited before claiming Long Term Capital Gain ?*



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HIGH COURT OF JUDICATURE AT BOMBAY



*(ii) Whether, on the facts and the circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to allow the claim of assessee regarding the sale of shares of M/s.Lavassa Corporation Ltd. without appreciating the fact that Share Transfer Register did not reflect the transfer of shares in Financial Year 2004-05 ?"*

3. The only question which arises in this Appeal is what is the cost of acquisition of 1665 shares in Yashomal Leasing and Finance (P) Ltd. (now merged in Lavasa Corporation Ltd.) which have been admittedly sold by the respondent – assessee along with other preference shares during the subject assessment year for the purpose of computing the capital gains. The Assessing Officer does not dispute that the respondent – assessee was owner of the 1665 shares in Lavasa Corporation Ltd. and had sold the shares along with other shares in the company during the previous year relevant to the subject assessment year. However, during the assessment proceedings the Assessing Officer by order dated 31st December, 2007 held that the respondent – assessee had failed to establish the purchase of 1665 shares in 2001. In particular he noted that the consideration claimed to have been paid by the respondent – assessee to the vendors of the 1665 shares viz. Mr. and Mrs.Bhale is found unreliable. This for the reason that the vendors had not



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HIGH COURT OF JUDICATURE AT BOMBAY



shown any receipt on account of sale of 1665 shares in its returns of income for Assessment Year 2001-02. On the basis of the above, the Assessing Officer concludes that as date of acquisition of the shares is not known, the entire receipt on sale of the shares has to be treated as short term capital gain and not at the value claimed by the respondent – assessee but at an value worked out by him.

4. Being aggrieved the respondent – assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By the order dated 17th October, 2008, the CIT(A) allowed the respondent-assessee's appeal on consideration of facts in detail. It held that the basis of the Assessing Officer not accepting the cost and the date of purchase of 1665 equity shares from Mr. and Mrs. Bhale was not acceptable in view of explanation offered by the respondent - assessee. In the explanation, the respondent – assessee's claim of having purchased the shares during the assessment year 2002-03 and the cost of acquisition was taken at Rs.41.25 lakhs for computation of capital gains on its sale.

5. Being aggrieved, the Revenue carried the issue in appeal before the Tribunal. The impugned order of the Tribunal upheld the order of the CIT(A). In particular, it noted that the Respondent – assessee could not be held responsible for the failure of the vendors of the shares i.e. Mr. and Mrs.Bhale to show the



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HIGH COURT OF JUDICATURE AT BOMBAY



receipts on sale of shares in its return of income for paying tax on the same. It noted the fact that all payments made for the purchase of shares from Mr. and Mrs.Bhale were made through account payee cheques. Further there were confirmation letters filed by the vendors Mr. and Mrs.Bhale which were not even considered by the Assessing Officer. The impugned order also found that the order of the CIT(A) accepting the explanation of the respondent-assessee for the discrepancies in its return of income could not be found fault with. In above view, the impugned order of the Tribunal upheld the order dated 17th October, 2008, of the CIT(A).

6. The grievance of the Revenue before us is essentially the respondent – assessee's shifting stand which evidences its failure to establish that the shares were in fact purchased from Mr. and Mrs.Bhale by paying consideration as claimed by the respondent – assessee. Besides various circumstantial evidences were pointed out on behalf of the Revenue in particular Mr. and Mrs.Bhale not having disclosed the sale of shares and offering capital gains tax on the same on their return of income. In the above view it is submitted that the respondent – assessee has not been able to clearly establish that they had in fact purchased the shares in the assessment year 2002-03.



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HIGH COURT OF JUDICATURE AT BOMBAY



7. We find that the respondent – assessee has originally in its computation of capital gains indicated the amount of Rs.1.38 crores as consideration paid to acquire 1665 shares of Lavasa Corporation Ltd. from Mr. and Mrs. Bhale. The same was explained by the respondent – assessee to the CIT (A) that while computing the capital gains it had inadvertently included payment of Rs.1 crore made to acquire 5,00,000 preference shares which merged in the consideration paid to acquire 1665 shares of Yashomala (now Lavasa Corporation Ltd.). This explanation was found satisfactory by the CIT (A) as well as by the Tribunal. The fact that Mr. and Mrs.Bhale, the vendors of 1665 shares to the respondent – assessee had not disclosed the receipt of consideration of sale in their returns of income and had not offered the same for tax cannot lead to the conclusion that no consideration was received by them. This is an issue which the Revenue is to take up with Mr. and Mrs.Bhale. The purchasers of shares cannot be held responsible for default made by the vendors of shares in filing their return of income and not disclosing consideration received by them for sale of their shares. It is also to be borne in mind that the Assessing Officer completely ignored the confirmation letter given by vendors of 1665 shares. Further fact that the respondent – assessee had paid the consideration for the sale of 1665 shares by account payee cheques is also significant. It is also pertinent to note that before the Tribunal the grievance of the revenue is that



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HIGH COURT OF JUDICATURE AT BOMBAY



the CIT (A) has accepted explanation of the respondent – assessee. It has been correctly observed by the Tribunal that the explanation given by any party has to be taken into consideration and if the same is found to be acceptable and correct, the authority has to accept the same. The consequences would follow.

8. In view of the fact that there are concurrent findings of fact recorded by the CIT(A) and the Tribunal accepting the purchase of 1665 shares of Lavassa Corporation Ltd. in the assessment year 2002-03 for a consideration of Rs.41.25 lakhs as claimed by the respondent – assessee. Nothing has been shown to us which would lead us to a conclusion that the finding of fact arrived at by the CIT(A) and the Tribunal are perverse. The view taken by both authorities on the basis of evidence and explanation made available before them was a possible and reasonable view.

9. In the above view the question as posed for our consideration does not give rise to any substantial question of law. Thus not entertained.

10. Appeal dismissed. No order as to costs.

**(A.K. MENON,J.)** **(M. S. SANKLECHA,J.)**



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