IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 113 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE K.J.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A.C.I.T.....Appellant(s)
Versus
G.C. SHAH & CO.....Opponent(s)

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Appearance:
MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1
MR HM TALATI, ADVOCATE for the Opponent(s) No. 1
MR TEJ SHAH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 05/11/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. This is an appeal by the appellant-Revenue, challenging the order of the ITAT,

Baroda, Dated : 18.09.2001, rendered in I.T.A. No.3547/Ahd/95, raising the following question of law for the consideration of this Court;

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has substantially erred in law and on facts in coming to the conclusion that the income of Rs.5 lakh received by the assessee towards surrender of sub-tenancy right is a capital gain and is not assessable as casual income as per section 10(3) read with section 56(1) of the Income Tax Act?"

2. The brief facts of the case are that the Respondent-assessee filed its return of income for the A.Y.-1992-93 on 17.11.1992, declaring its total income at Rs.6,73,720/-. During the course of examination of profit and loss account of the Respondent-assessee, it was found that it had received Rs.5,00,000/- as miscellaneous income from relinquishment of sub-tenancy right of a property. Hence, AO made addition of Rs.5,00,000/- in the income of the Respondent-assessee under the head 'Income from Other Sources'.

3. Being aggrieved thereby, the Respondent-assessee preferred an appeal before the CIT(A), which partly allowed the said appeal, but, confirmed the assessment by the AO to the aforesaid extent. Hence, the Respondent-assessee carried the matter before the ITAT, which set aside the order of the CIT(A) to the extent it

taxed the amount of Rs.5,00,000/- received by the Respondent-assessee under Section 10(3) of the Income Tax Act, 1961 (for short, 'the Act'). Hence, the present appeal.

4. Heard. At the very outset, learned Counsels for the parties invited the attention of this Court to a decision of the Hon'ble Apex Court in the case of "***COMMISSIONER OF INCOME TAX VS. D.P. SANDU BROS., CHEMBUR P. LTD.***", 273 ITR 1. In that case the assessee had entered into a lease agreement for fifty years in the year 1959, under which annual rent was paid by the lessee to the lessor. During the previous year relevant to the A.Y.- 1987-88, the assessee surrendered its tenancy rights to its lessor and in consideration of such premature termination of the agreement, the lessor paid the assessee, therein, a sum of Rs.35,00,000/-. The AO sought to assesses the aforesaid sum as 'Income From Other Sources" under Section 10(3) read with Section 56 of the Act. When an appeal was preferred, the CIT(A) held that the assessee was liable to pay tax on capital gains on the amount of Rs.35,00,000/-, after deducting Rs.7,00,000/- lacs as cost of acquisition. On further appeal against the aforesaid order, the appellate Tribunal held that the assessee did not incur any costs to acquire lease-hold rights and that, if at all, any costs had been incurred, it was incapable of being ascertained, since, the capital gains could not be

computed, as envisaged under Section 48 of the Act. On appeal, the High Court dismissed the same. Pursuant thereto, the matter was carried before the Hon’ble Apex Court, which disposed of the matter observing as under;

> “That it was not open for the department to impose tax on such capital receipts by the assessee under any other head for the A.Y. 1987-88, since, income derived from a source falling under a specific head is to be computed under the appropriate section and no other. A tenancy right is a capital asset and its surrender would attract Section 45 and the gains derived would be assessable, if at all, only under the head ‘Capital Gains’. That being so, it cannot be treated as a casual and non-recurring receipt under Section 10(3) and subject to tax under Section 56 of the Act. If the income cannot be taxed under Section 45, it cannot be taxed at all.”

5. Thus, from the above discussion, it becomes clear that the appellant-Revenue could have taxed the amount of Rs.5,00,000/- under the head of ‘Capital Gains’, which was received towards surrendering of tenancy right from lessor, and not under any other head. We, therefore, do not find that the appellate Tribunal committed any jurisdictional error in passing the impugned order.

6. In the result, the appeal fails and is dismissed.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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