IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1503 of 2011

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COMMISSIONER OF INCOME TAX-I - Appellant(s)
Versus
MAHESHCHANDRA G VAKIL - Opponent(s)

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Appearance :
MR MANAV A MEHTA for Appellant
None for Respondent

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS.JUSTICE HARSHA DEVANI

Date : 25/09/2012

ORAL ORDER

(Per : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. The appellant – revenue has challenged the order dated 31.05.2011 made by the Income Tax Appellate Tribunal (the Tribunal) by proposing the following question :

> *"Whether on facts and circumstances of the case and in law, the Hon'ble ITAT is right in deleting the addition of Rs.36,71,881/- made u/s. 68 by the Assessing Officer by treating the Short Term Capital Gain as unexplained cash credit?"*

2. The assessment year is 2006-07 and the corresponding accounting period is 01.04.2005 to 31.3.2006. The respondent – assessee filed return of income declaring total income of Rs.12,02,147/- including short term

capital gain of Rs.4,92,580/-. The Assessing Officer framed assessment under section 143(3) of the Income Tax Act, 1961 treating Rs.36,71,882/- as unexplained cash credit under section 68 of the Act as against capital gain on sale of share declared by the assessee. The assessee carried the matter in appeal before the Commissioner (Appeals) who allowed the said ground of appeal and directed the Assessing Officer to accept the claim of the assessee of Rs.36,71,882/- as capital gains. The revenue carried the matter in appeal before the Tribunal, but did not succeed.

3. Mr. Manav Mehta, learned counsel for the appellant has assailed the impugned order by placing reliance upon the reasoning adopted by the Assessing Officer.

4. As can be seen from the impugned order, the Tribunal, after appreciating the evidence on record, has found that before the Assessing Officer the assessee had explained that the purchase transactions were made on the “Online Trading System” and these transactions were genuine. Earlier, that is prior to 1.4.2005, it was not compulsory for the client to have his own transaction record under SEBI guidelines. Therefore, the purchases earlier were made using the broker's code, and it was for this reason that the broker had used the “self code”. Since the shares were sold after 1.4.2005, the transactions were not under the broker’s code. As regards service-tax and stamp charges the contract note of the broker clearly mentioned that the brokerage was inclusive of service tax etc. In the case of the selling broker the Service tax Securities

Transaction tax and Education Cess were separately mentioned. As regards the point raised by the Assessing Officer that there was absence of broker-client agreement, the Tribunal accepted the submission of the assessee that the genuineness of the transactions was already proved by the contract notes for sale and purchase, the bank statement of the broker, the Demat Account showing transfer in and out of shares, as also abstract of transactions furnished by the CSE. The Tribunal, after appreciating the evidence on record, concurred with the findings recorded by the Commissioner (Appeals) that the assessee had furnished complete details which were not found false or bogus by the Assessing Officer and that it was only on suspicion that the Assessing Officer had treated the capital gain declared by the assessee as unexplained cash credit under section 68 of the Act. In the light of the aforesaid findings of fact recorded by it, the Tribunal dismissed the appeal of the revenue.

5. In the light of the above findings of fact recorded by the Tribunal, it is not possible to state that the view adopted by the Tribunal is, in any manner, unreasonable or perverse. Besides, the learned counsel for the appellant is not in a position to show that the Tribunal has placed reliance upon any irrelevant material or that any relevant material has been ignored, nor is he able to point out any material to the contrary so as to dislodge the concurrent findings of fact recorded by the Tribunal. Under the circumstances, the impugned order being based upon concurrent findings of fact recorded by the Tribunal upon

appreciation of the evidence of record, does not give rise to any question of law, much less, a substantial question of law so as to warrant interference. The appeal is, accordingly, dismissed.

[AKIL KURESHI, J.]

[HARSHA DEVANI, J.]

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