

itxa-1025-2015

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

INCOME TAX APPEAL NO.1025 OF 2015

The Pr. Commissioner of Income Tax-3 .. Appellant.
v/s.
The New India Assurance Co. Ltd., .. Respondent.

Mr. Suresh Kumar, for the Appellant.
Mr. F. V. Irani with Mr. A. K. Jasani, for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.**
DATE : 5th MARCH, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 27th October, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 27th October, 2014 is in respect of Assessment Year 2006-07.

2 Revenue urges the only following re-framed question of law, for our consideration:

“ Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in allowing exemption to the assessee u/s. 10 of the I.T. Act, 1961?”

3 The impugned order of the Tribunal dismissed the Revenue's Appeal from the order dated 12th November, 2012 of the Commissioner of

Income Tax (Appeals) [CIT(A)], who held that Respondent is entitled to the benefit of Section 10 (38) of the Act in respect of the sale of investments being long term capital gains. The proceedings before the Tribunal leading to the impugned order dated 27th October, 2014 emanated from the re-opening notice dated 17th March 2011, seeking to re-open the assessment completed under Section 143(3) of the Act on 31st December, 2017.

4 The impugned order of the Tribunal dismissed the Revenue's appeal by following the decision of this Court in **General Insurance Corporation v/s. DCIT 342 ITR 27**. In the above case, this Court held on an identical facts that General Insurance Corporation (supra) is entitled to the benefit of exemption under Section 10(38) of the Act.

5 The grievance of the Revenue before us is that:

- (a) the impugned order of the Tribunal has ignored the decision of its Co-ordinate Bench in respect of Assessment Year 2004-05 which held that diminution or appreciation of any value of assessment will not be taken into account while computing the total income of the Respondent-Assessee;
- (b) The impugned order ignores the binding decision of the Apex Court in **GIC v/s. CIT 240 ITR 139**; and
- (c) An identical question in case of GIC v/s. CIT (ITXA No.201 of 2011) has been admitted on 25th February, 2013. Thus, this question requires admission.

6 Mr. Suresh Kumar draws our attention to the order dated 29th July, 2011 passed by the Tribunal in respect of the same Respondent for

the Assessment Year 2004-05. The above decision arose from a Revision under Section 263 of the Act of an Assessment Order. The aforesaid decision arose out of writing off Investments while determining the income of the Assessee. It did not even remotely deal with the issue of exemption under Section 10(38) of the Act i.e. sale of investment as long term capital gain. Thus, it can have no application to the facts of the present case. Further, the decision of the Apex Court in GIC (supra), relied upon by the Revenue also does not deal with the claim for exemption under Section 10(38) of the Act and would have no application to the present facts. The Revenue was unable to point out the manner in which the above decision of the Apex Court applies to the present facts.

7 Mr. Suresh Kumar, next submits that on an identical issue in GIC v/s. CIT(ITXA No. 201 of 2011). This Court has admitted the following question on 25th February, 2013 as substantial question of law as under:-

“ Whether on the facts and in the circumstance of the case and in law the Tribunal was justified in holding that profit on sale of investments are not liable to be taxed in the hands of the assessee in the year under appeal?”

Therefore, he submits that the question as formulated be admitted.

8 The issue raised in the above question in GIC [ITX No.201 of 2011 (supra)] is not with regard to the exemption claimed under Section 10(38) of the Act as in the present proceedings. The question on which the above appeal has been admitted, is whether profits on sale of investments are liable to be (included) taxed in the hands of the assessee i.e. profits on sale of investments being liable to be tax. It does not deal

with the benefit of exemption under Section 10(38) of the Act. The question as raised herein proceeds on the basis that even if sale of investments is liable to be taxed, yet to the extent it relates to long term capital gain falling under Section 10(38) of the Act, the exemption would be available. Thus, the question arising for our consideration in this appeal is different from the question on which the appeal of the GIC in ITX No. 201 of 2011 (Supra) was admitted.

9 Moreover, we find that this Court in General Insurance Corporation (supra) had also relied upon the communication dated 21st February, 2006 of the CBDT to the Chairman of the Insurance Regulatory and Developing Authority.. In the above communication, it has been clarified that exemption available to any other assessee under clause 10(38) relating to long term capital, would also be available to a person carrying on non-life Insurance business. Mr. Suresh Kumar very fairly states that the CBDT communication dated 21st February, 2006 addressed by the CBDT to the Chairman, IRTA, as well as the decision of this Court in GIC (supra) would be binding upon the Revenue.

10 In view of the above, the question as framed does not give rise to any substantial question of law.

11 Accordingly, **Appeal dismissed.** No order as to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)