HIGH COURT OF JUDICATURE AT BOMBAY



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

INCOME TAX APPEAL NO. 1366 OF 2017

The Commissioner of Income Tax
(IT)-4 .. Appellant.
v/s.
M/s. Siemens Nixdorf Information
Systemse GmbH .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. Nitesh Joshi i/b. Mr. A. K. Jasani, for the Respondent.

**CORAM: M.S.SANKLECHA &**
**NITIN JAMDAR, JJ.**
**DATE : 26th AUGUST, 2019.**

**P.C:-**

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 31st March, 2016 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 31st March, 2016 is in respect of Assessment Year 2002-03

2 Revenue urges only the following 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 holding that the loan given to its subsidiary in India, by the foreign company constitute capital asset within the meaning of section 2(14) of the Income Tax Act?"*

3 Briefly, the facts leading to this appeal are as under:-

(i) The Respondent has a subsidiary company by the



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name Siemens Nixdorf Information Systems Limited (SNISL). The Respondent had lent an amount of Rs.90 lakhs Euros to SNISL under an Agreement dated 21st September, 2000. SNISL ran into serious financial troubles and it was likely to be wound up. In this situation, Respondent sold this debt (Rs. 90 lakhs Euros) to one Siemens AG. This on the basis of valuation carried out by M/s. Infrastructure and Leasing Finance Ltd. The Respondent claimed the difference in the amount which was invested/ lent to SNISL and the consideration received when sold / assigned to Siemens AG as a short term capital loss. However, the Assessing Officer while completing the assessment on 30th March, 2005 disallowed the short term capital loss. This on the basis that the amount of Rs. 90 lakhs Euros lent by the Appellant to its subsidiary SNISL, was not a capital asset under Section 2(14) of the Act and also no transfer in terms of Section 2(47) of the Act took place on assignment of a loss;

(ii) Being aggrieved with the order dated 30th March, 2005, the Respondent carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 14th March, 2011, the CIT(A) did not accept the Respondent's contention that the amount of Rs.90 lakhs Euros lent to SNILS was a capital asset and upheld the order of the Assessing Officer. However, held that although the assignment of a loss was a transfer under Section 2(47) of the Act, but it is of no avail, as the loan



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being assigned/ transferred, is not a capital asset;

(iii) On further appeal, the Tribunal by the impugned order dated 31st March, 2016 allowed the Respondent's appeal. It examined the definition of capital assets under Section 2(14) of the Act. It held that it defines the term *'capital asset'* as *'property of any kind held by an assessee, whether or not connected with his business or profession'* ,except those which are specifically excluded in the said section. It further records the exclusion is only for stock in trade, consumables or raw materials held for purposes of business. It thereafter examined the meaning of the word *'property'* to conclude that it has a wide connotation to include interest of any kind. It places reliance upon the decision of this Court in the case of ***CWT v/s. Vidur V. Patel [1995] 215 ITR 30*** rendered in the context of Wealth Tax Act, 1957 which while considering the definition of *'asset'* had occasion to construe the meaning of the word *'property'* . It held the word *'property'* to include interest of every kind. On the aforesaid basis, the Tribunal held that in the absence of loan being specifically excluded from the definition of capital assets under the Act, the loan of Rs.90 lakhs Euros would stand covered by the meaning of the word '*capital asset'* as defined under Section 2(14) of the Act. It also held that the transfer of the loan i.e. capital asset will be covered by Section 2(47) of the Act. This as the Revenue had not filed any appeal on this issue. Thus, holding that the Respondent would be entitled to claim loss on capital



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account while assigning/ transferring the loan given to M/s. SNISL to one to M/s. Siemens AG.

4 Mr. Tejveer Singh, learned Counsel in support of the Appeal submits that the impugned order of the Tribunal is not sustainable for the loan of Rs.90 lakhs Euros was not a capital asset in terms of Section 2(14) of the Act. It is further submitted that, reliance placed upon the decision of this Court in Vidur V. Patel (supra) was not proper for the reason it was rendered in the context of a different Act viz.- the Wealth Tax Act, 1957. Thus, it can have no application while dealing with the Act. It is also his submission that the reliance upon decision of the Gujarat High Court in ***CIT v/s. Minor Bababhai 128 ITR 1*** is inappropriate, as in that case, the Revenue has accepted that the amount due from the un-secured creditor were in the nature of capital assets. Thus, there was no dispute on the issue of *'capital asset'* as in this case. Therefore, this appeal deserves admission.

5 We find that Section 2(14) of the Act has defined the word *'capital asset'* very widely to mean property of any kind. However, it specifically excludes certain properties from the definition of *'capital asset'*. The Revenue has not been able to point out any of the exclusion clauses being applicable to an advancement of a loan. It is also relevant to note that it is not the case of the Revenue before us that this amount of Rs.90 lakhs Euros was a loan/ advance income of its trading activity.

6 The impugned order of the Tribunal has considered the meaning of the word *'property'* as given in the context of



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the definition of asset in the Wealth Tax Act to hold *'property'* to include the every interest which a person can enjoy. This was extended by the Tribunal to understand the meaning of the word *'property'* as found in the context of capital asset under Section 2(14) of the Act. The Revenue has not been able to point out any reasons to understand meaning of the word *'property'* as given in the Section 2(14) of the Act differently from the meaning given to it under Section 2(e) of the Wealth Tax Act, 1957. This Court in the case of Vidur Patel (supra) has observed as under:-

> *" ... So far as the meaning of 'property' is concerned, it is well settled that it is a term of widest import and subject to any limitation which the context may require, it signifies every possible interest which a person can hold or enjoy. As observed by the Supreme Court in Commissioner, Hindu Religious Endowments vs. Shri Lakshmirudra Tirtha Swami of Sri Shirur Mutt (1954) SCR 1005, there is no reason why this word should not be given a liberal or wide connotation and should not be extended to those well-recognized types of interests which have the insignia or characteristic of property right.:*

The only objection of the Revenue to the above decision being relied upon is that it is rendered under a different Act. We are unable to understand this distinction when both the Acts are cognate. However, this submission need not detain us, as this Court had occasion to consider the meaning of the word *'capital asset'* as defined in Section 2(14) of the Act in ***Bafna Charitable Trust v/s. CIT 230 ITR 846.*** In the above case, this Court observed as under:-

> *" 'Capital asset has been defined in clause (14) of section 2 to mean property of any kind held by an*



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*assessee,whether or not connected with his business or profession, except those specifically excluded. The exclusions are stock-in-trade, consumable stores or raw materials held for the business or profession, personal effects, agricultural land and certain bonds. It is clear from the above definition that for the purposes of this clause, property is a word of widest import and signifies every possible interest which a person can hold or enjoy except those specifically excluded."*

The Revenue has not been able to point out why the above decision of this Court rendered in the context of capital assets as defined in Section 2(14) of the Act, is inapplicable to the present facts. Nor, why the loan given to M/s. SNISL would not, in the present facts, be covered by the meaning of *'capital asset'* as given under Section 2(14) of the Act.

7 In the above view, as the issue raised herein stands concluded by the decision of this Court in M/s. Bafna Charitable Trust (supra) and also by the self evident position as found in Section 2(14) of the Act, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

8 Accordingly, **Appeal dismissed.**

**(NITIN JAMDAR,J.)** **(M.S.SANKLECHA,J.)**



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