COURT FEE INDIA TEN RUPEES

COURT FEE INDIA FIVE RUPEES

C-F. 15/-

(4) (2)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

Division Bench

Tax Case (Income Tax Appeal) No. 53 /2008

Appellant	:	Assistant Commissioner of Income Tax 1(1), Raipur (C.G.)
		VERSUS
Respondent	:	Smt. Jyoti Gupta, C/o. M/s. Sunita Global Ltd. H.No. 510, Opp. Rajkumar College, G.E. Road, Raipur

R.R. No. 29/08/08
Presented by Shri Saurabh Dargi
Dated 26/09/08

INCOME TAX APPEAL U/S. 260 A OF INCOME TAX ACT, 1961.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM: **HON'BLE SHRI YATINDRA SINGH, C.J.**
HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA, J.

Tax Case (Income Tax Appeal)- 53 of 2008

Appellant : Assistant Commissioner of Income Tax (1) Raipur (C.G.)

VERSUS

Respondent : Smt Jyoti Gupta

Tax Case (Income Tax Appeal)- 54 of 2008

Appellant : Assistant Commissioner of Income Tax (1) Raipur (C.G.)

VERSUS

Respondent : Smt Sheetal Gupta

Income Tax Appeals u/s 260A of the Income Tax Act, 1961

Appearance: Shri Anand Dadariya, counsel for the Appellant.

ORDER
(01st January, 2014)

1. These appeals are filed by the Income Tax Department (the Department) against the order of the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, (the Tribunal) dated 21.05.2008 allowing the appeals of Smt Jyoti Gupta (ITA 462/Nag/2007) and of Smt Sheetal Gupta (ITA 464/Nag/2007) (the Assessees) and setting aside the order passed by the Commissioner of Income Tax, Raipur (the CIT) under section 263 of the Income Tax Act, 1961 (the Act) in respect of the Assessment Year 2003-04(the AY).

THE FACTS

2. The Assessees filed separate returns on 28.11.2003. In their return, Smt. Jyoti Gupta showed the long term capital gains (LTCG) of ₹39,55,200/-; whereas, Smt. Sheetal Gupta showed LTCG of ₹39,57,750/-.

3. The Assessing Officer (the AO) by order dated 20.03.2006 accepted LTCG of the Assessees.

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4. It appears that the AO had also sent a query to the Additional Director of Income Tax (Investigation), Kolkata (the ADIT) regarding investigation of LTCG. His report was received on 30.03.2006, that is to say, ten days after the AO passed the order.

5. The CIT passed an order under section 263 of the Act on 14.11.2007 setting aside the order of the AO dated 20.03.2006 and remanded the case back for re-assessment after considering the report of the ADIT.

6. Aggrieved by the aforesaid order, the Assessees filed appeals before the Tribunal. These appeals have been allowed by the Tribunal on 21.05.2008. Hence, the present appeals by the Department.

THE DECISION

7. We have heard counsel for the Appellant.

8. These appeals were admitted on 17.06.2010 and 20.04.2010. However, they were admitted only on the following question:

> 'Whether the Income Tax Appellate Tribunal is legally correct in quashing the CIT's appeal under Section 263 on the ground that there is no specific finding in the order that the purchase and sale of shares and resultant long term capital gain (LTCG) shown by the assessee are bogus or manipulated, particularly when the inquiry report regarding the nature of the LTCG was not considered at the time of assessment and when the same was available in the record at the time of action u/s. 263?'

9. Considering that—

- The Assessees had submitted all documents required from them including purchase and sale of the shares;
- The report of the ADIT was neither placed on record nor placed before us. The portion quoted in the order is of general nature;

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- There is nothing on the record to show that Herald Commercial Pvt. Ltd. Is not a registered company or shares were not traded through registered stock exchange—

The Tribunal committed no illegality in setting aside the order of the CIT.

10. The tax cases have no merit. They are dismissed.

Sd/- Chief Justice	Sd/- Manindra Mohan Shrivastava Judge

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