IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NOS. 35 AND 37 OF 2014

TAX APPEAL NO. 35 OF 2014

The Commissioner of Income Tax
Karnataka (Central), Bangalore .... Appellant

V e r s u s

Sadia Sheikh
major in age,
FR5, 4th Floor, Souza Towers,
Opp. Municipal Garden,
Panaji - Goa.
PAN : AKQPS9076A .... Respondent

AND

TAX APPEAL NO. 37 OF 2014

The Commissioner of Income Tax
Karnataka (Central), Bangalore .... Appellant

V e r s u s

Sadiq Sheikh
major in age,
FR5, 4th Floor, Souza Towers,
Opp. Municipal Garden,
Panaji - Goa.
PAN : AKQPS9076A .... Respondent

Ms. Asha Desai, Advocate for the appellant.

Mr. A. N. S. Nadkarni, Senior Advocate with Mr. Nikhil D. Pai, Advocate for the respondent.

Coram:- F. M. REIS &
C. V. BHADANG, JJ.

Date:- 2nd December, 2015

ORAL ORDER (Per F. M. Reis, J)

The above appeals challenge an order dated 27.09.2013 passed by the Income Tax Appellate Tribunal, Panaji whereby the appeals preferred by the Assessee came to be allowed.

2. Briefly, the facts of the case are that a search under Section 132 of the Income Tax Act was conducted on 25.02.2010 in the residential premises of the Assessee situated near Don Bosco, Odxel, Dona Paula Goa and the Assessee filed return of income originally on 23.12.2009 declaring the loss of Rs.12,46,907/-. The case was thereafter centralized by order dated 16.06.2010 passed by the Commissioner of Income Tax, Chennai. Accordingly, a notice under Section 153A of the Income Tax Act dated 20.01.2011 was issued and served on the Assessee on 25.01.2011 calling for the return of income for the aforesaid Assessment Year as the Assessee did not file the return of income in response to the notice issued under Section 153A, reminders were thereafter issued and accordingly, the Assessee filed return of income on 02.08.2011 by declaring a total income of Rs.16,76,364/-. Further notices under Section 142(1) and Section 143(2) of the Income Tax Act were issued on 03.08.2011 and the assessment was completed on 29.12.2011 inter-alia holding that the

claim of surrender of nine flats to Landscape Developers was brought to tax after verification of seized material to the tune of Rs.1,70,91,150/- as a colourable device to benefit M/s. Landscape Developers and undisclosed receipts from the sale of flats of Carbo to the tune of Rs.7,85,90,195/- was brought to tax being sham transaction.

3. Being aggrieved by the said order of the Assessment Officer, the respondent preferred an appeal before the Commissioner of Income Tax (A) who dismissed the appeal and upheld the Assessment Order however, the credit to the cost of acquisition was given to the Assessee and no separate addition on account of surrender of the flats to the builder being notional income was accepted. Being aggrieved by the said order of the Commissioner of Income Tax (A), the respondent filed an appeal before the Income Tax Appellate Tribunal which was allowed. The learned Tribunal allowed the appeal of the Assessee and deleted the addition of Rs.1,70,91,150/- made by the Assessment Officer and with reference to the addition of Rs. 7,85,90,105/- the Income Tax Appellate Tribunal held that the cash received in respect of nine flats belonged to the M/s Landscape Developers and the Revenue was directed to assess the said amount in the hands of M/s Landscape Developers. Being aggrieved by the said order, the appellant has preferred the above appeals.

4. During the course of the hearing of the above appeals, the learned counsels have pointed out that in respect of the same transaction this Court has disposed of Tax Appeal Nos. 15 and 16 of 2014 dismissing the appeals preferred by the appellant/revenue and that the point involved in the present appeals is similar to the point which arose in such appeals. On perusal of the order passed by the learned Appellate Tribunal, we find that the learned Tribunal upon appreciating the evidence on record has come to the conclusion that the respondents were not sellers in the subject sale deed and that the seller was M/s. Landscape Developers who were the vendors in the registered document. Apart from that, the learned Tribunal also noted that the genuineness of the transaction between the respondent-assessee and the developers is not disputed by the appellant/revenue. Besides, the learned Tribunal also noted that the consideration was received by the said developers and did not come in the hands of the respondent-assessee herein. The learned Tribunal also noted that even assuming any cash transaction, such amount cannot be taxed in the hands of the respondent-assessee as there was no material on record to establish that he has received such amount. It is also not disputed that the subject transaction in the present appeals were also the transactions which are the subject matter of Tax Appeal Nos. 32 and 33 of 2014 which have also been disposed of by the order passed today. We find that the learned counsel appearing for the appellant has failed to show any perversity in the findings arrived at by the learned

Tribunal. This Court in the present appeals cannot reappreciate the evidence on record. As such, there are no substantial questions of law arise in the present appeals as proposed by the appellant for consideration. Hence, the appeals stand rejected.

C. V. BHADANG, J **F. M. REIS, J**

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