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

INCOME TAX APPEAL NO.1486 OF 2013

The Commissioner of Income Tax-V ..Appellant
-***Versus***-
Jayna Enterprises Private Limited ..Respondent

WITH
INCOME TAX APPEAL NO.1569 OF 2013
WITH
INCOME TAX APPEAL NO.1589 OF 2013
WITH
INCOME TAX APPEAL NO.1591 OF 2013
WITH
INCOME TAX APPEAL NO.1617 OF 2013
WITH
INCOME TAX APPEAL NO.1432 OF 2013
WITH
INCOME TAX APPEAL NO.1504 OF 2013
WITH
INCOME TAX APPEAL NO.1435 OF 2013
WITH
INCOME TAX APPEAL NO.1584 OF 2013
WITH
INCOME TAX APPEAL NO.483 OF 2013

....
Mr. Tejveer Singh for the Appellant.
Mr. Mihir Naniwadekar for the Respondent.
....

CORAM: S. C. DHARMADHIKARI AND
A. K. MENON, JJ.

DATE :- 8th APRIL, 2015.

P.C.:

In paras 44 and 45 of the impugned order, the Tribunal has directed as under:-

> "*44. Since we restore the issue to the file of the Assessing Officer, therefore, the issue of commission is also restored to the file of the Assessing Officer. In case the assessee is able to prove that the distinctive numbers in the splitted shares from the consolidatd share certificates are th same which have subsequently been dematerialized and later sold, then, the long term capital gain declared by the assessee has to be allowed as genuine. In other words, the charging of commission as accommodation entry will not survive. The grounds raised by the assessee are accordingly allowed for statistical purposes.*
>
> *45. The grounds in the remaining appeals are identical to the grounds in ITA No.659/PN/2011. We have already decided the issue and the matter has been restored to the file of the Assessing Officer with certain directions. Following the same ratio, we restore all the appeals to the file of the Assessing Officer for deciding the issue afresh in the light of our observations in ITA No.659/PN/2011.*"

2] We are really surprised as to how the revenue can challenge such an order of the Tribunal rendered on 31st October, 2012 where it does not raise any substantial questions of law.

3] When we were about to pass an order, our attention was invited to a Division Bench order of this Court passed on 15th March, 2013 in Income Tax Appeal(L)No.416 of 2013 on similar questions but in case of a different assessee, not admitted by this Court and the appeal of the revenue was dismissed.

4] Following that view and even otherwise finding that the directions reproduced do not raise any substantial questions of law, we proceed to dismiss this appeal.

5] We proceed to dismiss not only the present appeal but the following appeals:-

Income Tax Appeal Nos.1569/2013, 1589/2013, 1591/2013, 1617/2013, 1432/2013, 1504/2013, 1435/2013, 1584/2013 and 483/2014.

6] As both sides concede that similar questions are raised by the revenue in those appeals, they were being not admitted and the appeal of the revenue having been dismissed. The parties conceded that all these appeals may be listed on today's board for admission and dismissed by this common order. They are, accordingly, dismissed.

(A. K. MENON, J.) **(S. C. DHARMADHIKARI, J.)**

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