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

INCOME TAX APPEAL NO. 1501 OF 2013

The Commissioner of Income Tax-25, Mumbai. … Appellant
v/s
Jagrut P. Gandhi, Mumbai. … Respondent

Mr.Tejveer Singh for the appellant.
Dr.K. Shivram along with Ms.Neelam Jadhav i/by Paras Savla & Rahul Hakani for the respondent.

CORAM: M.S. SANKLECHA &
N. M. JAMDAR, JJ.

DATED : 9TH JUNE, 2015

P.C.:

This appeal by the Revenue challenges the order dated 23 October 2012 of the Income Tax Appellate Tribunal (the Tribunal).

2 The appellant proposes the following questions of law for our consideration:

(I) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in treating the profit arrived from purchase and sale of shares as capital gains instead of business income as treated by the Assessing Officer even though most of the shares are bought and sold within short period, while some shares are not sold due to market conditions and their holdings with the assessee remains few days which denote that the motive of the assessee is to carry on business in shares to book profit rather than investment in shares ?

(II) Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal is correct and right in holding that the income of the assessee from sale and purchase of shares is not the business income as assessed by the Assessing Officer ?

3 The assessment year involved is 2006-07. The impugned order of the Tribunal follows its earlier order passed for Assessment Year 2005-06 in the respondent assessee's own case on 21 December 2009. The appeal of the Revenue from the order of the Tribunal dated 21 December 2009 being Income Tax Appeal (L) No.1341 of 2010 to this Court was not entertained by order dated 15 February 2011.

4 In the above view, no substantial question of law arises for our consideration.

5 The appeal is dismissed. No order as to costs.

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