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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1120 OF 2013

The Commissioner of Income Tax-21, Mumbai ..Appellant.
V/s.
Smt. Shashikala M.Shetty ..Respondent.

AND
INCOME TAX APPEAL NO.1391 OF 2013

The Commissioner of Income Tax-21, Mumbai ..Appellant.
V/s.
Mrs. Kasturi Vasanji Mamania ..Respondent.

Ms.S.V.Bharucha for the appellant in both the appeals.
Mr.Jitendra Jain with Ms.Niyati Hakani i/b. M/s. PDS legal for the respondent in both the appeals.

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

DATED : 17TH MARCH, 2015

P.C. :-

1. The revenue is aggrieved by the order passed by the Mumbai Bench of the Income Tax Appellate Tribunal in a batch of appeals for the assessment year 2007-08. One of the appeal filed pertains to the present assessee.

2. Ms. Bharucha appearing for the revenue in support of the appeal submits that the order of the Tribunal raises

substantial questions of law which have been formulated by the revenue in the paper-book. She submits that the Commissioner of the Income Tax (Appeals) as also the Tribunal erred in holding that the sale of a building by the assessee was a capital asset and not stock in trade, which could have led even to adventure in the nature of trade.

3. The Commissioner as also the Tribunal found that the property situated at Andheri (East), Mumbai admeasuring 3221.00 sq. mtrs. was purchased from M/s. Chemosyn Ltd. under a deed of conveyance dated 26th May, 1989 duly registered. That was purchased by the assessee before us Mrs.Shashikala M.Shetty and Mrs.Kasturi Vasanji Mamamia. From the date of acquisition to 16th January, 2003, the two owners were enjoying the rental income from the property having leased various units in the said property to various tenants. On 16th January, 2003 they formed a partnership firm in the name of Bluechip Construction Co. and with an intent to develop the property, they sought permission for redevelopment and it was granted by the Municipal Corporation of Greater Mumbai by issuing a commencement certificate dated 27th April, 2004. The partnership firm was to

be the contractor for development and reconstruction of the building and after formation of the same and obtaining the certificate, acquisition of the transfer development rights (TDR), the assessee received an offer from M/s.Multiple Commodity Exchange of India Ltd. Though the building was completed to the extent of 60% but in the light of the lucrative offer, the assessee disposed of the property and the construction undertaken thereon, which has been the subject matter of an agreement dated 2nd February, 2007. It is thereafter that the revenue called upon the assessee to reply as to why this transaction should be not construed as an adventure in the nature of trade. However, the Tribunal found that beyond the solitary offer from M/s.Multiple Commodity Exchange, there was none other. Similarly, even after the redevelopment and reconstruction, both the assessee were intending to enjoy the rental income as before by letting the units to tenants. It is in this background that the Tribunal held that the sale in favour of M/s.Multiple Commodity Exchange of India Ltd. was a capital asset and was not a disposal of the stock in trade which could have led to an adventure in the nature of trade. That is how the orders were set aside and the gains were allowed to be treated as capital gains with allowable deductions under section 54F and 54EC of the I.T. Act. Given this background and which is admitted, we do not see how the Tribunal's order can be termed as perverse. It has applied a correct and reliable test by allowing the appeals as noted above and that was arrived on the basis of the record and the relevant facts and circumstances. It was, therefore, the view imminently possible and cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. We do not find any merit in the revenue's appeal and it does not raise any substantial question of law. The appeal is dismissed. No order as to costs.

INCOME TAX APPEAL NO.1391 OF 2013

4. By consent of the parties, we take Income Tax Appeal (L) No.734 of 2013 and now numbered as Income Tax Appeal No.1391 of 2013 on board. In the light of the admitted facts and admitted questions, which are identical to the present cases, we are of the view that the said appeal also deserves to be dismissed. For the reasons recorded by us as above, this appeal fails and is dismissed. No order as to costs.

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