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

INCOME TAX APPEAL NO. 220 OF 2013

Commissioner of Income Tax-25 ..Appellant

Vs.

Chhitubhai N. Patel ..Respondent

....

Mr. Arvind Pinto, Advocate for Appellant.
Mr. Deepak Trakhawala i/b V.S. Hadaole, Advocates for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 2nd FEBRUARY 2015

P.C.:

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') against the order dated 6th June 2012 passed by the Income Tax Appellant Tribunal (the 'Tribunal).

2. The Assessment Year involved is Assessment Year 2007-08. The revenue has pressed the following question of law for our consideration:

> *"Whether on the facts and in the circumstance of the case and in law, the ITAT was right in holding that the income of the Respondent was that of capital gains instead of business as assessed by the AO?"*

3. The respondent-assessee in its return of income had returned its income on account of purchase and sale of shares as arising out of investments and therefore under the head of Capital Gains. The Assessing Officer by his order dated 29th December 2009 did not accept the respondent-assessee's contention and by following the order of the Commissioner of Income Tax (Appeals) (CITA(A)) dated 2nd July 2009 for the preceding Assessment Year 2006-07 brought gain made on the purchase and sale of shares to tax under the head Income from Business.

4. In appeal, the CIT(A) after considering the facts of the case intrelia held that the gain made on purchase and sale of shares by the respondent arose out of shares held as investments. This conclusion was based on the fact that the delivery of all the shares have been on payment of Security Transaction Tax (STT) and sale effected only after the shares were transferred to his name. On further appeal by the revenue, the Tribunal by the impugned order upheld the findings of the CIT(A). In particular the Tribunal records the fact that the basis of the Assessing Officer's order to tax the gains on purchase and sales of shares as business income was the order passed by the CIT(A) in the case of respondent for the Assessment Year 2006-07. However that order of CIT(A) for the Assessment Year 2006-07 had been set aside by the

Tribunal in its order dated 20th December 2012 to hold that the transaction of sale and purchase of the shares by respondent was not on account of trading in shares but was in the nature of investment. Thus exigible to tax as capital gains. The aforesaid order of Tribunal dated 20th December 2012 for the Assessment Year 2006-07 was carried in appeal to this Court. This Court by order dated 5th August 2011 (Income Tax Appeal (L) No. 686/2011) dismissed the revenue's appeal. It is also record that for the Assessment Year 2008-09, the revenue's appeal on the same issue was dismissed by the Tribunal.

5. The grievance of the revenue is that the respondent-assessee is dealing with large volume of shares and consequently it should be brought to tax under the head Income from Business. The basis of this demand in the assessment order was the order dated 2nd July 2009 of the CIT(A). However the same has been reversed by the Tribunal and the order of the Tribunal has been upheld by this Court. Moreover the authorities i.e. CIT(A) and the Tribunal on examination of facts found that before the sale of shares, the respondent-assessee's had the shares transferred to its name after paying STT. These transactions of purchase and sale were delivery based transactions. Thus concurrent findings of fact. Besides the impugned order has merely followed the decision of this

Court in the petitioner's own case for earlier Assessment Year. In view of the above, we find no substantial question of law arising for our consideration in this appeal.

6. Accordingly, **appeal** is **dismissed.** No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

S.S.DESHPANDE