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

INCOME TAX APPEAL NO. 1631 OF 2013

Commissioner of Income Tax-19 … Appellant
v/s
Shri Jaimal K. Shah
L/H. Mannet J. Shah … Respondent

Ms.S.V. Bharucha for the appellant.
Ms.Bhagyashri P. Jakhade for the respondent.

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

DATED : 12TH AUGUST 2015

P.C.:

This appeal by the revenue challenges the order of the Income Tax Appellate Tribunal (the Tribunal) passed on 30 May 2012, for the Assessment Year 2007-08.

2 Ms.Bharucha urges the following question for our consideration :-

"Whether on the facts and circumstances of the case and in law, the Tribunal was right in relying on the judgment of the High Court in the case of C.I.T. v/s Citi Bank NA, 261 ITR 570 and holding that the capital gains in respect of transfer of right of assessee in the land has to be computed separately as long term capital gains and gain respect of sale of superstructure of flats to be treated as short term capital gains ?

3 We find that, before the Tribunal, the respondent-assessee had raised an alternative submission to the effect that capital gains be separately computed in respect of sale of superstructure i.e. flats and the land on which the superstructure stands. The impugned order of the Tribunal accepted the submission of the respondent-assessee by placing reliance upon the decision of this Court in ***C.I.T. v/s. Citi Bank N.A.,*** reported in ***261 ITR 570,*** wherein it has been held that land is an asset different from the superstructure on it. Therefore the impugned order held that profit from sale of the flats and the land has to be computed separately. Thus, long term capital gains on sale of the land and short term capital gains on sale of flats was upheld.

4 The revenue has not been able to point out any reason why the decision of this Court in ***Citi Bank NA*** (supra) would not apply to the facts of the present case. In view of the fact that the impugned order has followed the order of the jurisdictional High Court and no distinguishing feature warranting different view in the present facts have been pointed out, the question as proposed does not give rise to substantial question of law for our consideration.

5 Appeal dismissed. No order as to costs.

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