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

INCOME TAX APPEAL NO. 394 OF 2014

Commissioner of Income Tax-5,
Mumbai .. Appellant
v/s.
M/s. Marigold Investrade Ltd. .. Respondent

Ms. S.V. Bharucha a/w Ms. Padma Divakar for the appellant
Mr. R. Murlidhar a/w Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 29th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 11th September, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. The Revenue has urged following question 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 directing the assessing officer to treat the assessee company as investment company and not a share trading company and to assesss the sale proceedings of the shares / warrants as Short Term Capital Gain as against the business income assessed by the Assessing Officer ?

3. The respondent assessee claims to be an Investment Company. In its return of income for the Assessment Year 2008-09, it had claimed an amount of Rs.25.54 lakhs as profit made on sale of its shares in M/s. Lok Housing & Construction Ltd. (Lok Housing), subject to tax under the head “Capital Gains”. This claim was made on the basis that on 11th May, 2006, it had been alloted 11,00,000 convertible warrants. The same were converted into shares on 28th August, 2007. The same was converted to demat on 11th December, 2007 and thereafter sold. However, the Assessing Officer in his assessment order dated 10th December, 2010 held that the aforesaid gain in sale of shares in Lok Housing are to be charged to tax as Business Income. This was on the basis of the period of holding of shares in M/s. Lok Housing from the date of it being converted to demat.

4. Being aggrieved, the respondent assessee carried the issue in appeal. By an order dated 19th August, 2011, the Commissioner of Income Tax (Appeals) [CIT(A)] recorded the fact that the shares in Lok Housing giving rise to income chargeable to tax were out of purchase of convertible warrants in Lok Housing on 11th May, 2006. These warrants were converted into shares on 28th August, 2007. However, the same

were demated on 11th December, 2007. In the above view, the CIT(A) held that the period for which the shares were held is from the date conversion from warrants to shares, which is in excess of four / five months and would entitle the respondent assessee to claim the same as arising on account of Short Term Capital Gains. It was further noted that for the earlier assessment years, the convertible warrants were shown as investments. Further, the CIT(A) records a finding of fact that the respondent assessee is an Investment Company and not a Trader in shares. In the aforesaid circumstances, the order of the Assessing Officer dated 10th December, 2010 was set aside and the amount of Rs.25.54 lakhs was brought to tax under the Short Term Capital Gains.

5. Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. The Tribunal on consideration of the facts arising in the present case and in particular the reasoning given by the CIT(A) to set aside the assessment order, upheld the order of the CIT(A).

6. We find that the two Authorities, namely, CIT(A) and the Tribunal by the impugned orders have held that the respondent assessee is an Investment Company. Further it is held that in respect of the shares in Lok Housing, which were sold during the subject

assessment year giving rise to capital gains of Rs.25.54 lakhs, the income was chargeable to tax under the head “Capital Gains” as the respondent assessee was not a Trader in shares. The aforesaid facts were found by the Authorities over and above the fact that the shares in fact were held after conversion into Demat for a period between 4 to 7 months.

7. The Revenue has not been able to show how and why the findings arrived at by the CIT(A) and the Tribunal are in any manner perverse and / or arbitrary. Two Authorities have concurrently come to a finding of fact that the respondent assessee is an Investment Company and the shares of Lok Housing were held for over a period of four to seven months from the date of their conversion into Demat form. Thus, the question as framed, being a finding of fact, does not give rise to any substantial question of law. Thus, not entertained.

8. Accordingly, the appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**