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

INCOME TAX REFERENCE NO. 133 OF 2000

Tasneem Siraj Lokhandwala .. Applicant
v/s.
The Commissioner of Income Tax,
Central-I, Mumbai .. Respondent

Mr. Jitendra Jain for the applicant
None for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 2nd SEPTEMBER, 2016.

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal at the joint request of the Revenue and the Assessee raises the following substantial questions of law for our consideration :-

Question at the instance of the Assessee –

"Whether on the facts and in the circumstances of the case, the receipt of Rs.30,00,000/- on surrender of assessee's beneficial rights in the trust is assessable to tax?"

Question at the instance of the Revenue –

"In the event of the answer to the question referred at the instance of the assessee is in the affirmative, whether on the facts and in the circumstances of the case, the receipt of Rs.30,00,000/- on surrender of assessee's beneficial interests in

the trust is to be taxed under the head 'Capital Gains' or under the head 'Income from business'?"

2. The relevant assessment year is A.Y. 1987-88.

3. Mr. Jain, learned Counsel appearing for the assessee, on instructions, states that the assessee is not interested in pursuing the present Reference. In the above view, the question as framed at the instance of the assessee is returned unanswered.

4. The substantial question as framed at the instance of the Revenue would only arise for consideration if the question raised by the assessee is answered in favour of the assessee. This is evident from the question itself. However, as the assessee is not interested in pursuing the question raised at its instance, the occasion to answer the question in its favour does not arise. In this view, the question framed at the instance of the Revenue became academic. Thus, the same is also returned unanswered.

5. The Reference is disposed of in the above terms.

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