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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2442 OF 2013

The Commissioner of Income Tax-15
Mumbai. ..Appellant
Versus
Sanjay Manohar Vazirani ..Respondent

....
Mr. A. R. Malhotra a/w N. A. Kazi for the Appellant.
None for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 7TH JUNE, 2016

P.C.:

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 30th January, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. The Revenue has urged the following questions of law for our consideration :-

"(i) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the revised

computation submitted by the assessee has to be accepted when the assessee had made a fresh claim without filing a revised return of income?

(ii) Whether, on the facts and circumstances of the case and in law, the Tribunal is right in holding that the borrowed funds, on which interest has been paid by the assessee, were utilized for the purpose of business and is an allowable expenditure when the assessee himself had declared the income from sale and purchase of shares as capital gain in his return of income?"

3. Brief facts:-

The respondent-assessee has filed a return of income, inter alia, disclosing as short term capital gain the profits earned on share transactions. During the course of assessment proceedings, the respondent-assessee revised its computation of income (without having filed Revised Return of Income) contending that the profit/loss on account of dealing in shares would be classifiable as business income and not as short term capital gain/loss. The Assessing Officer did not accept the same as the same was not supported by a Revised Return of Income.

4. In first appeal before the Commissioner of Income Tax(Appeals), the respondent-assessee claimed that the profit/loss on account of amounts attributable to short term capital gain/loss should be classified as business

income as it did not arise out of investments. However, the CIT(A) by order dated 1st June, 2012 did not accept the contention of the respondent-assessee. Thus leaving the Assessment Order dated 30th December, 2011 undisturbed on the above issue.

5. Being aggrieved, the respondent carried the issue in appeal to the Tribunal. The impugned order dated 30th January, 2013 allowed the appeal. This by placing reliance upon the decision of this Court in ***CIT v/s. Pruthvi Brokers and Shareholders Pvt. Ltd. 349 ITR 336*** wherein the claim of the assessee without filing a Revised Return of Income was allowed as in any event the issue had been raised before the Appellate Authorities.

7. We find that the impugned order of the Tribunal has followed the decision of this Court in Pruthvi Brokers and Shareholders Pvt. Ltd. (supra). Mr. Malhotra, the learned counsel, appearing for the Revenue is unable to point out any distinguishing features in the present facts which were warrant us taking a different view from that taken in Pruthvi Brokers and Shareholders Pvt. Ltd. (supra). In the above view, the question no.1 as formulated does not give rise to any substantial question of law. Thus, not entertained.

8. So far as question no.2 is concerned, Mr. Malhotra, the learned counsel for the Revenue states that the same is consequential to the answering of question no.1. This is because once the assessee's contention that the gain on account of purchase and sale of shares is in the nature of business income, then, the interest paid by the respondent-assessee for borrowing funds for its business has necessarily to be allowed. In the above view, question no.2 also does not give rise to any substantial question of law. Thus, not entertained.

9. Appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

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