Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2511 OF 2013

Commissioner of Income Tax-25 ..Appellant
Versus
Dilip V. Variya ..Respondent

....
Mr. Arvind Pinto for the Appellant.
Mr. N. M. Porwal for the Respondent.
....

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

DATE : 12th JULY, 2016

P.C.:

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 15th May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2. Mr. Pinto, the learned counsel appearing for the Revenue urges the following reframed questions of law for our consideration:-

> *"Whether income earned from sale of shares is classifiable as business income or under the head 'capital gains'?"*

We find that the impugned order of the Tribunal followed its order in case of the same Respondent-Assessee for A.Y. 2005-06. An appeal from that order by the Revenue being Income Tax Appeal No.1088 of 2011 was dismissed by this Court on 9th January, 2013. Mr. Pinto further very fairly states that facts are are identical in this Assessment Year to that existing Assessment Year 2005-06.

3. Therefore, the question as framed being concluded does not give rise to any substantial question of law. Thus, not entertained.

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

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

wadhwa