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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2337 OF 2013

Commissioner of Income Tax-
Central-IV ..Appellant
Versus
M/s. B. Arunkumar & Co. ..Respondents

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Mr. Tejveer Singh for the Appellant.
Ms. Vasanti Patel for the Respondents.

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

DATE : 8TH MARCH, 2016

P.C.:

1. This Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) takes exception to the order dated 24th May, 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order dated 24th May, 2013 relates to Assessment Year 2008-09.

2. Mr. Singh, learned counsel appearing for the revenue urges only the following question of law for our consideration:-

> *"Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition made by the AO, on account of the sale of shares of M/s. Inter Gold*

(India) Pvt. Ltd., resulting in Long Term Capital Gain?"

3. The respondent-assessee is a firm belonging to one Harshad Mehta Group. The respondent-assessee firm own 19% shares in a compay namely M/s. Inter Gold (India) Pvt. Ltd. The respondent-assessee sold its 19% shareholdings in M/s. Inter Gold (India) Pvt. Ltd. to one M/s. Rosy Blue (I) (P) Ltd. and returned a capital loss as under:-

No. of Shares	Cost(Rs.)	Index Cost (Rs.)	Sale Value (Rs.)	Gain/Loss (Rs.)
37612	3,52,29,659	4,55,67,000	3,52,29,659	(1,03,37,341)
1,50,450	11,28,37,500	13,90,90,520	11,28,38,500	(2,62,53,020)

Therefore the consideration for the sale of shares in two tranches were Rs.750/- per share and R.936/- per share respectively.

4. The Assessing Officer did not accept the capital loss as claimed and sought to substitute the consideration received by the respondent-assessee at Rs.936/- and Rs.750/- per share with the value of Rs.1225/- per share as consideration received on the sale of its shares to M/s. Rosy Blue India Pvt. Ltd. This substituted value being the break-up value of the shares was taken as its fair market value (FMV). In the result, the Assessing officer by his order dated 30th December, 2010 worked out the long term capital gains at Rs.4.57 crores instead of loss at Rs.3.65

crores as claimed.

5. Being aggrieved the respondent assessee carried the issue in appeal to the Commissioner of Income Tax(Appeals). By order dated 20th September, 2011, the Commissioner of Income Tax (Appeals) allowed the appeal of the respondent-assessee. It referred to Section 48 of the Act to hold that the capital gains are computed as follows: from the full value of consideration received as a result of the transfer of the capital assets, the cost of acquisition of the assets and expenditure incurred on transfer is to be deducted and the balance is the gain which is subjected to tax. In the present case, full value of the consideration received by the respondent-assessee in the two tranches of transfer was at Rs.750/- per share and Rs.936/- per share respectively. It holds that in the absence of any provision in the Act to replace the consideration received in fact on sale of shares, by adopting the market value is not permissible. In contrast attention was drawn to Section 50C of the Act which provides for substitution of the consideration received on sale of land and buildings by the stamp duty value of land and buildings (immovable property). It further held that the Assessing Officer cannot substitute the consideration shown as received on sale of shares by the respondent-assessee in the absence of bringing evidence on record to indicate that the consideration

disclosed on sale of shares was not the complete consideration received and/or accrued to the respondent-assessee. Accordingly the appeal of the respondent-assessee was allowed by an order dated 20th September, 2011.

6. Being aggrieved the Revenue carried this issue in appeal to the Tribunal. By the impugned order the Tribunal reiterated the findings of fact rendered by the Commissioner of Income Tax (Appeals) that the transfer of the shares at the declared consideration was not done by the respondent-assessee with the object of tax avoidance or reducing its tax liability. It was done with a veiw to consolidate the business. Moreover it observes that it is also not the case of the revenue that the entire transaction of sale was a colourable device to reduce tax liability. The Tribunal in the impugned order placed reliance upon decision of the Apex Court in CIT v/s. Gillaners Arbuthnot and Co. (87 ITR 407) and CIT v/s. George Henderson & Co. Ltd. (66 ITR 622) to conclude that where a transfer of an capital assets takes place by sale on receipt of a price, then the consideration fixed/bargained for by the parties should be accepted for the purpose of computing capital gains. It cannot replaced by the market value or a notional value. The full value of consideration is the money received to transfer the assets. Accordingly, the Tribunal dismissed the Revenue's Appeal by the impugned order dated 24th May,

2013 and upheld the order of the Commissioner of Income Tax (Appeals).

7. The Revenue being aggrieved is an appeal before us. Mr. Singh, learned counsel for the revenue submits that the decisions of the Apex Court relied upon in the impugned order were rendered under Income Tax Act, 1922 and therefore would not apply while considering the Act.

8. We find that both Commissioner of Income Tax (Appeals) as well as the Tribunal have rendered a finding of fact that the consideration of Rs.750/- and Rs.936/- per share received on the sale of the shares by the respondent-assessee was in fact the full consideration which have been disclosed to the revenue. It is not the case of the revenue that the amount disclosed by the respondent asessee was less than what has been received by them or what had accrued on sale of its shares. The revenue has not in any manner shown that the consideration disclosed by the respondent-assessee to the revenue is not the correct consideration received by them and that the same should be replaced. Moreover, wherever the Parliament thought it fit that the consideration on a transfer of a capital asset has to be ascertained on the basis of market value of the asset transferred specific provision has been made in the Act. To illustrate Section 50C of

the Act provides for stamp value duty in case of transfer of land or buildings. Similarly, Section 45(2) and 45(4) of the Act in cases of conversion of the investment into stock in trade or transfer of shares on dissolution of a firm to its partners respectively has to be at market value. In this case computation of capital gain is governed by Section 48 of the Act and it only refers to full value of consideration received. The reliance upon the decision of the Apex Court by the Tribunal was therefore appropriate.

9. In the above view, as there are concurrent finding of fact rendered by the Commissioner of Income Tax (Appeals) and by the Tribunal that the consideration disclosed on sale of shares by the respondent-assessee was infact the only consideration received/accrued to it, no occasion to substitute the same can arise. This concurrent finding of fact has not been shown to be perverse in any manner. Accordingly, the question as proposed does not give rise to any substantial question of law. Thus not entertained.

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

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

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