Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

MISC CIVIIL APPLICATION NO. 213 OF 2017
IN
TAX APPEAL NO.32 OF 2014
WITH
MISC CIVIIL APPLICATION NO. 207 OF 2017
IN
TAX APPEAL NO.33 OF 2014

The Commissioner of Income Tax ... Applicant
Versus
Sadiq Sheikh ...Respondent

Ms Amira Razaq, *Junior Government Standing Counsel for the applicant*
Mr N Pai, *for the respondent*

CORAM: G.S. PATEL & NUTAN D. SARDESSAI, JJ
DATED: 25th September 2017

PC:-

1. A clarification is sought by the revenue of an order dated 2nd December 2015 that disposed of Tax Appeals Nos. 32 and 33 of 2014. The clarification is, specifically, in respect of paragraphs 5 and 8 of that order, which read thus :

> "5. During the course of the hearing of the above appeals, both the learned counsel have pointed out that in respect of the same transaction, this Court had disposed of Tax Appeal Nos. 15 and 16 of 2014 by order dated

> 09.04.2014 whereby the appeals preferred by the Appellant came to be dismissed. It is also not disputed that the facts in the present appeals and in the said appeals as well as the parties are the same.
>
> 8. In the present appeals, taking note of the said observations and the findings of the fact arrived at by the learned Tribunal on the basis of the agreements executed by the Assessee, that there was no transfer of possession in terms of the provisions of Section 2(47) of the Income Tax Act, in the subject year we find that the findings of the learned Tribunal deleting the capital gains of Rs.14,05,63,839/- cannot be faulted. The findings of the fact arrived at by the learned Tribunal on that count cannot be re-appreciated by this Court. The learned counsel appearing for the Appellant has not shown any perversity in such findings and/or there was any misreading of evidence on record. Admittedly, in the present cases, there was no irrevocable licence nor the Respondents were given complete control of the subject premises in the Assessment Year 2008-2009 by the Respondent. As pointed out herein above, the learned counsel appearing for the respective parties have not disputed that in the similar situation the Tax Appeal Nos. 15 and 16 of 2014 have been dismissed. The learned counsel appearing for the Appellant has pointed out that there was no challenge to the said judgment passed by this Court."

2. There might have been some substance to this had it been shown that the whole of that order depends on these two paragraphs. Instead, we find that even if these two paragraphs are not taken into account, the rest of the order remains unaffected. We are, therefore, unable to appreciate how in the name of a "clarification" we could actually embark on what is to all intents and purposes a review when there is no facially apparent error made out, nor any other ground permissible in a review shown.

3. The application is, therefore, dismissed. There will be no order as to costs.

4. Consequently Misc Civil Application No.207/2017 is also dismissed.

NUTAN D. SARDESSAI J. **G. S. PATEL J.**