Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

MISC CIVIIL APPLICATION NO. 214 OF 2017
IN
TAX APPEAL NO.35 OF 2014
WITH
MISC CIVIIL APPLICATION NO. 206 OF 2017
IN
TAX APPEAL NO.37 OF 2014

The Commissioner of Income Tax … Applicant
Versus
Sadia 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. 35 and 37 of 2014. The clarification is, specifically, in respect of paragraph 4 of that order, which reads thus :

> "4. During the course of the hearing of the above appeals, the learned counsels have pointed out that in respect of the same transaction this Court has disposed of Tax Appeal Nos. 15 and 16 of 2014 dismissing the appeals

> preferred by the Appellant/revenue and that the point involved in the present appeals is similar to the point which arose in such appeals. On perusal of the order passed by the learned Appellate Tribunal, we find that the learned Tribunal upon appreciating the evidence on record has come to the conclusion that the Respondents were not sellers in the subject sale deed and that the seller was M/s. Landscape Developers who were the vendors in the registered document. Apart from that, the learned Tribunal also noted that the genuineness of the transaction between the Respondent-assessee and the developers is not disputed by the Appellant/revenue. Besides, the learned Tribunal also noted that the consideration was received by the said developers and did not come in the hands of the Respondent-assessee herein. The learned Tribunal also noted that even assuming any cash transaction, such amount cannot be taxed in the hands of the Respondent-assessee as there was no material on record to establish that he has received such amount. It is also not disputed that the subject transaction in the present appeals were also the transactions which are the subject matter of Tax Appeal Nos. 32 and 33 of 2014 which have also been disposed of by the order passed today. We find that the learned counsel appearing for the Appellant has failed to show any perversity in the findings arrived at by the learned Tribunal. This Court in the present appeals cannot reappreciate the evidence on record. As such, there are no substantial questions of law arise in the present appeals as proposed by the Appellant for consideration. Hence, the appeals stand rejected."

2. There might have been some substance to this had it been shown, or had it been persuaded that the whole that order depends on this sole paragraph. Instead, we find that even if this paragraph of that order is not taken into account, the reaming part of the order is 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.206/2017 is also dismissed.

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