IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 382 OF 2015

Pr.Commissioner of Income Tax-Central-2. … Appellant.
V/s.
M/s.Velvet Holdings Pvt.Ltd. … Respondent.

WITH
INCOME TAX APPEAL NO. 241 OF 2015

M/s.Velvet Holdings Pvt.Ltd. … Appellant.
V/s.
The Commissioner of Income Tax-II and another. … Respondent.

Mr.A.R.Malhotra and Mr.N.A.Kazi for the appellant in ITXA No.382/2015 and for the respondents in ITXA No.241/2015.

Mr.Pankaj R. Toprani for the appellant in ITXA No.241/2015 and for the respondent in ITXA No.382/2015.

CORAM : A.S.OKA AND A.K.MENON, JJ.

DATE : 29th November 2017.

P.C.:

As these two appeals arise out of the same impugned judgment and order, we have taken up the same together for admission.

2. In this case, we are concerned with the return of income filed by the appellant for the assessment year 2004-05. For the sake of convenience we are referring the parties as assessee and revenue. The

assessee is a notified person under the provisions of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 (for short "the said Act of 1992"). All the assets of the assessee were vested in the Custodian appointed under the said Act of 1992. The return for the assessment year 2004-05 was belatedly filed in the year 2007. The total income declared by the assessee was Rs.17,03,508/- which is computed in accordance with the provisions of section 115JB of the Income Tax Act, 1961 (for short "the said Act of 1961). A notice under section 148 of the said Act of 1961 was served to the assessee.

3. The order of assessment was made by the Assessing Officer on 10th October 2007. The assessee had claimed benefit under section 50 of the said Act of 1961. In the assessment order passed under sub-section (3) of section 143, the Assessing Officer held that the assessee is liable to pay interest under sections 234A, 234B and 234C of the said Act of 1961. A demand notice was, accordingly, ordered to be issued. The penalty proceedings were ordered to be initiated.

4. An appeal was preferred by the assessee being aggrieved by the order of the Assessing Officer. The appeal came to be dismissed by the Commissioner of Income Tax (Appeals). Against the said order, an appeal was preferred by the assessee before the Income Tax Appellate Tribunal (for short "Appellate Tribunal"). The appeal preferred by the assessee was partly allowed. The Appellate Tribunal upheld the findings on the issue of applicability of section 50 of the said Act of 1961. Income Tax Appeal No.241/2014 is preferred by the assessee against the said

order.

5. As far as appeal preferred by the revenue (Income Tax Appeal No.382/2015) is concerned, the issue involved therein is confined to liability to pay penalty under clause (c) of section 271 of the said Act of 1961. The challenge is to the order of the Appellate Tribunal dated 27th August 2014 by which the appeal preferred by the assessee was allowed and the order of levy of penalty under section 271(1)(c) was set aside.

6. As far as the appeal preferred by the assessee is concerned, the learned counsel appearing for the appellant fairly stated that he is not pressing the first substantial question of law formulated therein. He also fairly invited our attention to the judgment and order dated 29th September 2017 in Income Tax Reference No.96/2000 (***Smt.Meena V. Pamnani, Mumbai v. The Commissioner of Income Tax***) as well as Commissioner of Income Tax, Central-II v. Cascade Holdings (P.) Ltd. [1]. The other substantial questions of law which are pressed into service by the assessee would not arise in view of the said decision of this Court.

7. As regards appeal preferred by the revenue, the submission of the learned counsel appearing for the revenue is that the law was very clear and knowing fully well the legal position, a claim to Long Term Capital loss was made by the assessee. The submission of the learned counsel appearing for the revenue is that making such a claim amounts to furnishing inaccurate particulars of income.

1 [2014] 45 taxmann.com 228 (Bombay)

8. We have given careful consideration to the submissions. As noted by the Appellate Tribunal, the undisputed position is that the assessee has furnished all the details of the sale of the property and also in relation to its purchase. The only dispute is with regard to the mode and manner of computation of income arising out the same. The assessee computed the income by taking into account Long Term Capital Loss. He was relying upon certain decisions of the Tribunal. The view taken by the Assessing Officer was to the contrary. Looking to the admitted position and the findings of fact, it was certainly not a case of concealment of particulars income or furnishing inaccurate particulars of income. It is not the case of the revenue that inaccurate details relating to the sale of property including sale proceeds and relating to its purchase were furnished by the assessee.

9. Therefore, there is no merit in the appeal preferred by the revenue. No substantial question of law arises. Accordingly, we pass the following order:

Both the appeals are dismissed with no order as to costs.

(A.K.MENON, J.) (A.S.OKA, J.)