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

INCOME TAX APPEAL NO.816 OF 2014

Commissioner of Income Tax 10, Mumbai ... Appellant
versus
Kalpana Madhani Securities Pvt.Ltd. ... Respondent

Mr.Arvind Pinto for Appellant.
Mr.Rahul K. Hakani for Respondent.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 26th April 2017

PC :

1. This appeal challenges an order passed by the Income Tax Appellate Tribunal, Bench at Mumbai (`Tribunal'). By the order dated 23rd October 2013 for the assessment year 2009-10, the Tribunal dismissed the Revenue's appeal and upheld the order of Commissioner of Income Tax (Appeals), Mumbai, dated 9th April 2012.

2. The first appellate authority set aside the Assessing Officer's order only on the applicability of explanation to Section 73 of Income Tax Act, 1961 (`Act'). The Respondent-assessee claimed that this explanation is applicable to it as its regular business, insofar as it relates to purchase and sale of shares of other companies, is also deemed as a speculative business. That did not find favour with the

Assessing Officer inasmuch as the explanation was a deeming provision and would have effect only for a limited purpose for which it was created. It could not extend beyond its legitimate field.

3. Section 73 of the Act would, in any case, apply only to the losses of the speculative business and not to the income arising therefrom, so that even if the profit from its regular business was regarded as a speculative business, as contended, benefit thereof could not be extended to the assessee. The decision of this Court cited by learned counsel for Revenue in case of **Commissioner of Income Tax Vs/ Lokmat Newspapers Pvt.Ltd.**[1], would , therefore, have no application, was the finding of the Assessing Officer against the assessee.

4. The other judgment relied upon by Appellant is in case of **Prasad Agents (P) Ltd. Vs. Income Tax Officer**[2]**.** Relying on that, the Tribunal concluded that the Assessing Officer's stand cannot be sustained. This Court had clarified that where explanation to Section 73 of the Act is attracted, the same would apply regardless of the fact that transaction is for profit or loss. That is why the Commissioner of Income Tax (Appeals) directed the Assessing Officer to treat the income as covered by Explanation to Section 73 as speculative income and apply that provision accordingly. He, therefore, did not agree with the Assessing Officer. That view of the Commissioner of Income Tax (Appeals) was challenged before the Tribunal by the Revenue.

1 (2010)322-ITR-43 (Bom)
2 (2011)333-ITR-275 (Bom)

5. The Tribunal by upholding this conclusion of the first appellate authority in paragraph 3.2, held that two decisions of this Court entirely cover the issue. However, the Tribunal clarified that it is only that part of the assessee's business that consists of purchase and sale of shares, could be covered by the Explanation to Section 73 of the Act and that is to be regarded as speculative.

6. All the more, therefore, the issue raised before us is squarely covered by two decisions of this Court. That the Revenue is aggrieved by the same and has taken up the matter to Hon'ble Supreme Court of India and where it is pending. Both the decisions referred above stand as of today and judicial discipline requires that we must apply them when facts are identical.

7. As a result of the above discussion, there is no substantial question of law raised in this appeal. It is accordingly dismissed, but with no costs.

(PRAKASH D. NAIK, J.) (S.C.DHARMADHIKARI, J.)

MST