IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.207 OF 2015

THE COMMISSIONER OF INCOME TAX-21)...APPELLANT

V/s.

RAVISHANKAR R. SINGH)...RESPONDENT

Mrs.S.V.Bharucha, Advocate for the Appellant.

Mr.J.D.Mistri, Senior Counsel, a/w. Mr.Sameer Dalal, Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA & A. M. BADAR, JJ.

DATE : 31st JULY 2017

P.C. :

1 The present appeal pertains to Assessment Year 2008-09.

2 The learned counsel for the appellant submits that the Assessing Officer and the Commissioner (Appeals) had rightly come to the conclusion that the revaluation of the satellite rights in the account of the partners inter-se would give rise to capital

gains. The satellite rights were the property of partnership till the date of the conversion whereas transfer of satellite rights to the incorporated company is not from the erstwhile firm but from the partners of the firm. This aspect which was rightly considered by the Assessing Officer and the Commissioner (Appeals) has been lost sight of by the Tribunal, thereby arriving at an erroeneous conclusion.

3 Mr.Mistri, the learned senior advocate for the respondent submits that there is no transfer of assets. The assets of the partnership firm stood vested with the company. The assets of the company were never distributed nor it is the case of dissolution of the firm. Mere revaluation of the satellite rights would not give rise to capital gains.

4 We have considered the submissions. It has been observed by the Tribunal that there is neither distribution of assets nor any realization of assets. There is no dissolution of the firm nor distribution of assets of the firm amongst the partners. No

transfer of assets has taken place. It is further observed that the partnership firm was converted into a private limited company and the satellite rights thereafter vests with the company. The revaluation of the assets by the partnership firm would not attract any capital gain. There was no transfer as defined under Section 47 of the Act. The Tribunal relied on the judgment of this court in the case of **Commissioner of Income Tax vs. Texspin Engineering and Manufacturing Works** reported in **Volume 263 ITR 345** which has observed thus :

> "In this case, the erstwhile firm has been treated as a Limited Company by virtue of Section 575 of the Companies Act. It is not in dispute that in this case, the erstwhile firm became a Limited Company under Part IX of the Companies Act. Now, Section 45(4) clearly stipulates that there should be transfer by way of distribution of capital assets. Under Part IX of the Companies Act, when a Partnership Firm is treated as a Limited Company, the properties of the erstwhile firm vests in the Limited Company. The

question is whether such vesting stands covered by the expression "transfer by way of distribution" in Section 45(4) of the Act. There is a difference between vesting of the property, in this case, in the Limited Company and distribution of the property. On vesting in the Limited Company under Part IX of the Companies Act, the properties vest in the company as they exist. On the other hand, distribution on dissolution presupposes division, realisation, encashment of assets and appropriation of the realised amount as per the priority like payment of taxes to the Government, BMC etc., payment to unsecured creditors etc. This difference is very important. This difference is amply brought out conceptually in the judgment of the Supreme Court in the case of Malabar Fisheries Co. v. CIT[1979] 120 ITR 49 2 Taxman 409. In the present case, therefore, we are of the view that Section 45(4) is not attracted as the very first condition of

> transfer by way of distribution of capital assets is not satisfied. In the circumstances, the latter part of Section 45(4), which refers to computation of capital gains under Section 48 by treating fair market value of the asset on the date of transfer, does not arise."

5 Hence, in view of the above, no substantial question of law arises. The appeal is dismissed. No costs.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**