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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1744 OF 2014

Commissioner of Income Tax-20 ..Appellant

Versus

Bimal Desai ..Respondent

....

Mr. S. V. Bharucha for the Appellant.
Ms. Aasifa Khan for the Respondent.

....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 15th MARCH, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. This appeal raises the following question of law for our consideration :-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in confirming the order of the Commissioner of Income Tax (Appeals) (CIT(A)) in deleting the addition of Rs.1,48,70,370/- made by the*

Assessing Officer on account of sale proceeds of shares of Karuna Cables as income from other sources as against STCG shown by the assessee when the assessee entered into bogus transaction to generate artificial Short Term Capital Gain from the penny stock?”

3. The basic dispute between the Revenue and the assessee is whether the receipt of Rs.1.48 crores is a genuine sale proceeds of shares of Karuna Cables Ltd. (KCL) or is it undisclosed income of the respondent-assessee. Before the CIT(A) the respondent-assessee had filed further evidence in the nature of affidavits. Consequent thereto a remand report was called by the CIT(A) from the Assessing Officer. The Assessing Officer in his remand report accepted the respondent-assessee's contention that the sale proceeds are genuinely on account of sale of shares i.e. amount received from CSL Stock Broking (P)Ltd. on the sale of shares of KCL. Consequently the CIT(A) deleted the addition made on account of the aforesaid sale of shares as income from undisclosed source and accepted the respondents claim of being a short term capital gain.

4. Being aggrieved by the order dated 9th March, 2011 of the CIT(A) deleting the addition of Rs.1.48 crores as income from other sources, the Revenue had preferred an appeal to the Tribunal. The Tribunal after

recording the aforesaid facts particularly the remand report of the Assessing Officer accepting the claim of the respondent-assesesee found no reason to upset the order passed by the CIT(A). Thus the impugned order of the Tribunal has also on facts found that the sale proceeds received on sale of KCL shares to be genuine.

5. In view of the concurrent finding of facts by the CIT(A) and the Tribunal, the question of law as proposed does not give rise to any substantial question of law as the same is not shown to be perverse. Thus not entertained.

6. Accordingly the appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa