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

INCOME TAX APPEAL NO. 115 OF 2015

The Commissioner of Income Tax-4, Mumbai … Appellant
Versus
M/s. IDFC SSKI Securities Pvt. Ltd. … Respondent

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Mr. Ashok Kotangle a/w Mr. Arun D. Nagarjun and Mr. Pradip Badgude i/b Mrs. Padma Divakar for the Appellant.
Mr. Hiro Rai a/w Mr. Subhash Shety for the Respondent.

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

DATE : 25th JULY, 2017

P. C. :

1. The Appeal pertains to assessment year 2008-2009.

2. Mr. Kotangale, learned counsel for the Appellant strenuously contends that the claim of the assessee has been wrongly accepted by the Commissioner (Appeals) and the Tribunal. According to the learned Counsel, the Tribunal was not justified in allowing the loss incurred on sale and purchase of shares as a business loss, even though the losses were clearly speculative in nature by virtue of explanation to section 73 of the Income Tax Act. Learned Counsel

submits that assessee has not been in a position to show that it is a case of error trading. Learned Counsel relied on a judgment of the Punjab and Haryana High Court in the case of ***Commissioner of Income Tax Vs. Maya Ram Jia Lal,*** reported in ***[1986] 162 ITR 520***. Learned Counsel submits that the Assessing Officer had rightly considered the loss in account of share transaction and the sale to be a speculation loss. The same is required to be added to the total income of the assessee.

3. The learned Counsel for the Respondent submits that the Commissioner (Appeals) and the Tribunal has rightly considered the loss to be on account of error trade. The business of the assessee is trading, brokerage and trading in shares. The assessee receives commission as a brokerage for the shares purchased by his clients. The clients did not accept the delivery resulting in loss on account of error trade. Learned Counsel relies on the judgment of Madras High Court in the case of ***Commissioner of Income Tax Vs. Anush Shares and Securities Pvt. Ltd.,*** reported in ***(2015) 93 CCH 166*** and another Judgment of Karnataka High Court in the case of ***Commissioner of Income Tax and another Vs. First Securities P. Ltd.***, reported in ***[2015] 370 ITR 72 (Karn)***, also on

the order of this Court in the case of ***The Commissioner of Income Tax-4 Vs. M/s. HSBC Securities & Capital Markets (India) P. Ltd.*** in ***Income Tax Appeal No. 1230 of 2013***, dated 20th April, 2015

4. We have considered the submissions canvassed by the learned Counsel for the respective parties, so also gone through the orders passed by the Tribunal and the authorities.

5. The genuineness of the transactions is not subject matter of dispute. It is also not disputed that the assessee carries on the business of brokerage and his income is shown from brokerages.

6. The Commissioner (Appeals) and the Tribunal have come to the conclusion that the impugned loss has occurred to the assessee in respect of error trade. The loss is not on the account of assessee's own trading in shares. In the case of ***M/s. HSBC Securities & Capital Markets (India) P. Ltd. (supra),*** this Court was considering the Appeal against order of Tribunal, wherein the Tribunal observed that if the loss is found to have occurred on account of error trade conducted by assessee on behalf of clients, then the claim will have to be accepted as business loss. This

Court has accepted the said finding in ***M/s. HSBC Securities & Capital Markets (India) P. Ltd. (supra)***. Same view is taken in the case of ***Commissioner of Income Tax Vs. Anush Shares and Securities Pvt. Ltd.*** by the Madras High Court (supra).

7. Considering the concurrent finding of fact that the loss is on account of error trade, the Judgment of the Tribunal cannot be faulted with. No substantial question of law arises. In view of above, no interference is called for. The Appeal is dismissed. No costs.

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