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

INCOME TAX APPEAL NO. 145 OF 2015

Commissioner of Income Tax-24. ... Appellant.
V/s.
Mrs.Purvi Nirav Vakharia. ... Respondent.

Mr.Arvind Pinto for the appellant.

Mr.K.Shivram, Senior Advocate with Mr.Rahul K. Hakani for the respondent.

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

DATE : 21st November 2017.

P.C.:

Heard the learned counsel appearing for the appellant. The appellant has pressed into service questions of law formulated in paragraph- 5 of the memorandum of appeal.

2. The respondent- assessee filed return declaring income of Rs.1,05,06,771/-. The declared income comprises of income from short-term capital gains, income from long-term capital gains, income from speculation and income from other sources.

3. The Assessing Officer passed an assessment order dated 13th December 2010. The Assessing Officer found that during the relevant year, the respondent- assessee had purchased 14,000 shares of Orbit Corporation, out of which, 8,000 shares were purchased from one broker on 22nd May 2007 and remaining 6,000 shares were purchased from another broker on 21st May 2007. The Assessing Officer found, after making enquiry with the Stock Exchange, that no such purchases were made during the financial year 2007-08. The Assessing Officer came to the conclusion that as payment for purchase of shares was made in the month of December 2007, all purchases of 14,000 shares by the respondent- assessee will have to be treated as purchases in December 2007. According to the Assessing Officer, price of shares of the company in the month of May 2007 was lower and, in fact, shares were purchased in December 2007 at the prevailing high price by showing that the same were purchased in May 2007 at lower price. The difference in the price of shares between December 2007 and May 2007 was worked out by the Assessing Officer at Rs.84,24,629/-. This was treated as payment made by the respondent- assessee for acquiring shares and was treated as unaccounted income. The Assessing Officer while passing the assessment order, also made an addition on account of alleged short-term capital gains to the tune of Rs.49,57,940/-. Being aggrieved by the order of the Assessing Officer, an appeal was preferred by the respondent- assessee before the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) by order dated 22nd July 2011 allowed the appeal preferred by the respondent- assessee on both counts. Being aggrieved by the order of

the Commissioner (Appeals), the appellant- Revenue preferred an appeal before the Income Tax Appellate Tribunal, "C" Bench, Mumbai (for short "Appellate Tribunal") which was dismissed by the impugned judgment and order.

4. The learned counsel appearing for the appellant invited our attention to the assessment order. He pointed out that the Assessing Officer had summoned the brokers calling upon them to give information about the transactions and to produce relevant documents and books of accounts. However, notwithstanding service of summons, the brokers did not appear. Notwithstanding grant of time, the respondent did not produce the brokers for verification. He urged that finding on this aspect of the Assessing Officer is totally overlooked by the Commissioner (Appeals) and the Appellate Tribunal. He submitted that going by the record of the Stock Exchange, the so-called purchases of shares by the respondent- assessee was in the month of May 2007. As per record of the Stock Exchange, in the month of May 2007 the brokers purchased the shares in their name and transferred it to the assessee's demat account in the month of December 2007. As regards second issue, he urged that the transactions effected in particular year will have to be tested separately and there cannot be hard and fast rule on this aspect. He invited our attention to the findings of fact recorded by the authorities below. He pointed out that the frequency of transactions in shares by the respondent-assessee was very high. He urged that even after recording the said finding the Appellate Tribunal accepted the case made out by the

respondent- assessee. He would, therefore, submit that substantial questions of law as framed arise in this appeal.

5. We have perused the order of the Assessing Officer, the judgment and order of the Commissioner (Appeals) and the judgment and order of the Appellate Tribunal. The Commissioner (Appeals) and the Appellate Tribunal found that the shares were purchased by the respondent- assessee in May 2007. In fact, the Appellate Tribunal referred to the contract notes issued by the Broker in the name of the respondent- assessee which show that the purchase of the shares was made in May 2007. There is a finding of fact recorded that though the payment of price of the shares was made in December 2007, the shares were purchased at the price prevailing in May 2007. The finding of fact recorded by the Appellate Tribunal on the basis of material on record is that the fact that the purchase of shares took place in December 2007 is not established. The Appellate Tribunal, after consideration of the documentary evidence, held that the same clearly establishes that the shares were purchased by the respondent- assessee in May 2007 at the then prevailing rate and subsequently there is a confirmation by the Brokers.

6. The Appellate Tribunal confirmed finding of fact recorded by the Commissioner (Appeals) that there is no evidence brought on record by the Revenue to show that any consideration for purchase of the said shares was paid by the respondent- assessee over and above what was

shown by the respondent- assessee. Therefore, on the basis of material on record, the finding of fact recorded by the Assessing Officer was set aside by the Commissioner (Appeals) while deciding appeal. His order has been confirmed by the Appellate Tribunal. The result of the finding is that the direction to treat the price difference between December 2007 and May 2007 as unaccounted income has been set aside. We see no reason to disturb the concurrent findings of fact recorded by the first and second appellate authorities. Hence, no substantial question of law arises as regards this finding.

7. Now coming to the second question/ground canvassed before the Appellate Tribunal, as a matter of fact, it was found that the respondent- assessee had made transactions in 24 scrips out of which 12 were allotted through IPOs. Therefore, it was held that it cannot be said that frequency of transactions in shares of the assessee was very high. The Appellate Tribunal has gone into reasons assigned by the respondent-assessee for the sale of shares through IPOs. The said explanation found favour with the Appellate Tribunal. Moreover, it was found that no repetitive transactions were entered into by the assessee. Lastly, it was found that entire investment in shares was made by the assessee out of her own funds.

8. Though the Appellate Tribunal has referred to the fact that similar treatment given by the assessee in the books of accounts for the earlier years was accepted by the Assessing Officer, that is not the only

ground on which the finding is rendered by the Appellate Tribunal. It is true that paragraph- 3.3 of the judgment of the first appellate authority may not contain elaborate reasons. However, the Appellate Tribunal has gone into the material on record and recorded the aforesaid findings. There is no reason to disturb the findings of facts recorded on the basis of material on record. There is no perversity in the findings. Hence, no substantial question of law is involved.

Appeal is accordingly, dismissed.

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