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

INCOME TAX APPEAL NO. 208 OF 2016

The Pr. Commissioner of Income Tax-4 .. Appellant

v/s.

Shri. Tajuddin M. Somjee ..Respondent

Mr. Tejveer Singh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 1st AUGUST, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 30th December, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2003-04.

2. The Revenue has urged the following substantial questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal while allowing claim of deduction under Section 54EC erred considering the date of transfer of capital asset

as 23.01.2003 (date of final payment of consideration received by the assessee) instead of the date of development agreement 15.06.2002 which is the actual date of transfer of capital asset.

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing assessee's Miscellaneous Application on additional evidence filed without setting aside the case before the concerned CIT(A) or concerned AO?

3. Regarding question no.(i) :-

(a) Mr. Tejveer Singh, learned Counsel appearing for the Revenue very fairly states that the decision of this Court in ***Commissioner of Income Tax Vs. Dr. Arvind S. Phake*** (Income Tax Appeal No.139 of 2015) rendered on 20th November, 2017 may conclude the issue against the Revenue. The only distinction which he seeks to draw in the present facts from that decision in the case of *Dr. Arvind S. Phake* (supra) is that the date of transfer there was taken as the date on which the possession of the property handed over by the assessee to the buyer. While in the present case, the date of transfer of the property has been taken by the Authorities as the date on which the last installment was received in respect of the sale of the property by the respondent assessee. This for the purpose of computing the six months within which the investment has to be made under Section 54EC of the Act.

(b) We had on the last occasion adjourned this appeal to today to enable Mr. Tejveer Singh to find out the date when possession of the property was given by the respondent assessee to the buyer in the present facts.

(c) Today, Mr. Tejveer Singh, learned Counsel for the Revenue states that he is unable to find out the date when possession of the property was given to the buyers as there is nothing on record of the Revenue and Officers are also not in a position to state. Normally, the last payment of installment would have been received before handing over of the possession of the property to the buyer or simultaneously with handing over the possession. Thus, in these facts, even if the six months period is taken from the date of receiving the last installment, the investment indisputably has been made within the period of six months from the date of transfer i.e. the date of receiving the last installment in the present facts.

(d) In the above view, this question as above does not give rise to any substantial question of law. Thus, not entertained.

4. <u>Regarding question no.(ii) :-</u>

(a) This issue was not urged by the Revenue before the Tribunal. In fact, the Revenue participated in the hearing on merits and assisted in the disposal of the miscellaneous application by the impugned order dated 30th December, 2013.

(b) Therefore, this not being an issue urged before the Tribunal by the appellant Revenue, it cannot give rise to any substantial question of law from the order of the Tribunal as held by this Court in ***Commissioner of Income Tax vs. Tata Chemicals Ltd. reported in 256 ITR 395.***

(c) In the above view, question no.(ii) also does not give rise to any substantial question of law. Thus not entertained.

5. Accordingly, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**