

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

Company Appeal No.5 of 2005

[Lalitkumar s/o Purushottamdasji Mohta v. Official Liquidator and another]

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Dr. Anjan De, Advocate for Official Liquidator.

Coram : R.K. Deshpande & M.G. Giratkar, JJ.

Date : 25th January, 2018

None appears for the appellant.

On the last occasion, i.e. on 18-1-2018, we passed an order as under :

“ Though the learned counsel for the appellant does not appear, we requested Dr. Anjan De, learned counsel to assist us in finding out the exact challenges raised in the appeal to the order impugned.

Put up this matter in the next week.”

Dr. Anjan De, the learned counsel appearing for the Official Liquidator, assisted us in understanding the controversy involved in the matter. The question is about the capital gain tax on the sale proceeds of Mohta House. By the impugned order dated 29-10-2004 passed in Company Application No.78 of 2004

in Company Petition No.14 of 1960 with Company Petition No.8 of 1962, this Court permitted payment of Rs.93,65,010/- towards the capital gain tax in the name of M/s. Laxmi Bank Ltd. (under liquidation) to the Income-Tax Department, subject to the findings and observations made in the said order.

After going through the impugned order, it seems to us that the question as to whether the provision of Section 178 of the Income Tax Act, 1961 is attracted or not, is left open to be decided at a subsequent stage along with all other objections, which were kept open. We are informed that the learned Company Judge has not decided those objections on the ground that this appeal is pending.

In view of above, this company appeal can be disposed of by holding that the learned Company Judge can proceed to decide all such objections which were kept open in the impugned order dated 29-10-2004. Upon such decision, it will be open for the parties to adopt appropriate remedies as are available in law, if they are so advised.

The company appeal stands disposed of in above terms.

(M.G. Giratkar, J.)

(R.K. Deshpande, J.)