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

INCOME TAX APPEAL NO. 931 OF 2017

Pr. Commissioner of Income Tax-12 .. Appellant
v/s.
Kingpin Investment & Finance P. Ltd. .. Respondent

Mr. Sham Walve for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.

DATED : 14th OCTOBER, 2019

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 20th July, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). This appeal relates to Assessment Year 2002-03.

2. The Revenue urges only the following question of law for our consideration :-

> *Whether in the facts and circumstances of the case and in law, the Tribunal was justified in holding that Long Term Capital Loss arising from the transfer of preference shares was not a sham transaction ?*

3. In its return of income for the subject assessment year, the respondent had claimed long term capital loss of Rs. 3.61 crores on sale of preference shares. These shares had been allotted by Welspun Mercantile Pvt. Ltd. (245360 shares) and Welspun Trading Pvt. Ltd. (134240 shares) to the respondent for appropriate consideration. During the assessment proceedings, the respondent also filed share certificates along with allotment letter issued by both the companies. Out of the above preference shares, the respondent had sold in the previous year relevant to the subject assessment year 215000 shares of Mercantile Welspun Pvt. Ltd. to Global Home-tex Ltd. and 30630 shares of M/s. Welspun Trading Pvt. Ltd. to M/s. Sheetal Financial Services Pvt. Ltd. The Assessing Officer noted that the transferee of the shares had suppressed the consideration to avoid payment of the stamp duty. Besides, funds for the purchase of the preference shares had been received from a group company namely M/s. Wellson India Ltd. and M/s. Glofame Cotton Yarn Ltd. Thus, the Assessing Officer came to the conclusion that as these companies belong to the same group, the entire transaction is a sham transaction. Further, it held that as no dividend had been received from the two companies

M/s. Welspun Mercantile Ltd. and Welspun Trading Pvt. Ltd. the transaction was not genuine. Therefore, the loss ought to be ignored as it is a sham transaction.

4. In appeal, the Commissioner of Income Tax (Appeal) [CIT(A)] dismissed the respondent's appeal.

5. On further appeal, the Tribunal on facts found that purchase of the preference shares was shown in the balace-sheet as on 31st March, 2001 filed along with return of income for the Assessment Year 2001-02. The above purchase was accepted in scrutiny assessment for Assessment Year 2001-02. The impugned order further records a finding of fact that the purchase of preference shares was genuine in as much as allotment letter, share certificate, consideration paid etc. was duly supported by the documentary evidence and return filed with the Registrar of companies. It also held that non-deduction of dividend by the company in which shares are held is not a factor to hold that the transaction is not genuine. In terms of Section 205 of the Companies Act, dividend shall be paid only out of profits. Mere suspicion that the transaction is sham transaction would not by itself justify disregarding the documents

already on record, which establish genuineness of the transaction. Moreover, on facts the Tribunal found that the loss which has arisen on the sale of the shares was due to indexed cost of acquisition and has been claimed as a set off against any profits. Thus, there could be no motive for a sham and / or bogus transaction as held by the Assessing Officer. On the aforesaid facts, the impugned order held that the transaction is genuine.

6. We note that the impugned order of the Tribunal on finding of fact has come to the conclusion that the transaction for claiming short term loss was genuine. Nothing has been shown to us which would indicate the above finding of fact by the Tribunal is perverse. Therefore, the question as proposed being one of finding of fact, does not give rise to any substantial question of law. Thus, not entertained.

7. Accordingly, the appeal is dismissed.

(NITIN JAMDAR, J.) **(M.S. SANKLECHA, J.)**