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

INCOME TAX APPEAL NO.1810 OF 2016

Pr. Commissioner of Income Tax-6
Mumbai : Appellant.
versus
M/s.Envision Investment & Finance P. Ltd. : Respondent.

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Mr. Ashok Kotangle a/w Mr. Prabhakar Ranshur for the Appellant.
Dr.K Shivram, Senior Counsel i/by Mr. Sameer G Dalal for the Respondent
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CORAM : AKIL KURESHI &
M.S.SANKLECHA, JJ.

DATE : FEBRUARY 27, 2019.

P.C.:

1 This Appeal is filed by the Revenue challenging the Judgment of the Income Tax Tribunal (for short "Tribunal) .

2 The questions framed in this Appeal relate to the applicability of Explanation to Section 73 of the Income Tax Act, 1961 in relation to the Respondent-Assessee which is a limited company. At the outset we may record that such an issue had never been raised by the Revenue in the earlier stage of the litigation. The real controversy between the parties all along has been with respect to a gain earned by the Respondent-Assessee out of sale of shares. The Assessing Officer treated the entire gain as arising out of the Assessee's

business activities. The CIT (Appeals) and the Tribunal, however, gave partial relief holding that the shares which were sold after the period of one year would give rise to long-term gain in the hands of the Assessee. It is this Judgment of the Tribunal which the Revenue has challenged by way of present Appeal.

3 In this context the Tribunal had made the following observations :-

> "6.2 We have heard the rivall submission and perused the material before us. In the case under consideration the asseessee had acquired shares of RNRL, Reliance Capital Ltd., Reliance Communications Ltd, and Reliance Industries Ltd. And the profit arising out of sale proceeds of these shares was shown under the head LTCG. Shares of first two companies and the last company i.e. except the shares of Reliance Communications Ltd.) were acquired in the month of January 2006 and were sold in the Month of Sept./July, 2007 and February, 2008 respectively. Shares of Reliance Communications Ltd. Were purchased in May, 2006 and were sold on 13.02.2008. In our opinion, the FAA had rightly held that the shares were rightly offered under the head LTCFG. The pattern of purchase of sale and holding period clearly prove that the behavior of the assessee was of an investor and not of a businessman. In our opinion the basic ingredients of business are missing in the above referred transaction. Therefore, confirming the order of the FAA, we decide ground no.1 against the AO."

4 The two things immediately emerge from the Judgment of the Tribunal. Firstly the question of nature of assessee's activities of buying and selling of shares being speculative in nature with special reference to

Explanation 73 of the Act was not an issue at all. We therefore do not permit the Revenue to raise such a contention for first time in this Appeal before the High Court since this issue can at the be considered as one of the facts and law. The second thing which emerges from the Judgment of the Tribunal is that the Tribunal had noted relevant facts applying correct parameters to come to a conclusion that in relation to the shares held by the assessee in excess of one year the intention was to invest in shares and not to engage itself in business of buying and selling the shares.

4 No question of law therefore arise for consideration. The Appeal is accordingly dismissed.

[M.S.SANKLECHA,J.] **[AKIL KURESHI, J]**