R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 109 OF 2017

Pr. Commissioner of Income Tax -21 .. Appellant

Versus

Virang P. Shah .. Respondent

....

- Mr. Sham Walve for the Appellant
- Mr. Sameer Dalal for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : APRIL 8, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short).

2. Following question is presented for our consideration:-

> " Whether on the facts and circumstances of the case and in law, the Tribunal erred in holding that deduction u/S. 54F of the I.T. Act, 1961 is allowable on capital gain arising on transfer of depreciable asset i.e Windmill without appreciating the fact that same is taxable as Short Term Capital Gain u/S. 50 of the Income Tax Act, 1961?"

3. The Tribunal in the impugned judgment has relied on a decision of this Court in case of **CIT Vs. ACE Builders (P)**

Ltd[1]. Perusal of the said judgment would show a very similar controversy had arisen in the said case. The Court was considering the scope of Section 50 of the Income Tax Act, 1961 ("the Act" for short). Whether legal fiction created therein is to deem capital gain as short term capital gain and not to deem an asset as short term capital asset. The Court held that Section 50 does not convert long term capital asset into short term capital asset. It was further held that Section 54E of the Act does not make any distinction between a depreciable asset and non-depreciable asset and therefore, exemption available to depreciable asset under Section 54E cannot be denied by referring to fiction created under Section 50 of the Act. This decision was applied in a situation where the Revenue had objected to short term capital gain computed under Section 50 on a long term depreciable asset to be set off against long term capital loss under Section 74 of the Act. The objection of the Revenue was negatived.

4. The Supreme Court in case of **CIT, Panji Vs. V.S. Dempo Company Ltd[2]** specifically approved the view of the

1 [2006] 281 ITR 210 (Bombay)
2 [2016] 387 ITR 354

Bombay High Court in case of ACE Builders P Ltd (supra).

5. No question of law arises. The Income Tax Appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**