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

INCOME TAX APPEAL NO.1761 OF 2016

Pr.Commissioner of Income-Tax-2 … Appellant

V/s.

Canara Bank Securities Limited … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Hiro Rai with Mr.Subhash Shetty for the Respondent.

CORAM : AKIL KURESHI AND
B.P.COLABAWALLA, JJ.
DATE : FEBRUARY 11, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal raising following question for our consideration:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that order 08.10.2010 passed by the AO is not erroneous and prejudicial to the interest of the revenue and thus exercise of jurisdiction by the CIT is unsustainable in law?"

2. The respondent-assessee is a private limited company.

For the return filed by the assessee for the assessment year 2008-09, issue before the Assessing Officer was of such income generated out of the assessee's investment funds in fixed deposits. The Assessing Officer accepted the assessee's stand that such income arose out of assessee's business activity. The order of assesment was taken in suo-moto revision by the Commissioner of Income Tax in exercise of powers under section 263 of the Income Tax Act (“the Act” for short). He was of the opinion that the Assessing Officer had not undertaken proper inquiries and had not examined the issue whether the interest income was to be assessed under the head “Income from business income or of other source”. He was therefore of the opinion that the order of assessment was erroneous and prejudicial to the interest of the revenue. He passed an order directing the Assessing Officer to complete the assessment by examining such an issue.

3. The assessee carried the matter in appeal. The Tribunal by the impugned judgment allowed the assesssee's appeal and set aside the order of the Commissioner of Income Tax. The Tribunal noted that the assessee was previously engaged in the business

primary dealing of securities. The assessee was in the process of switching over to the new business of stock broking. The assessee had liquidated its investment from the past business and parked the surplus fund in fixed deposit awaiting commencement of activities in the new business. It was on account of such facts that the assessee had claimed the interest income as arising out of its business activity. The Tribunal was of the opinion that this was entirely plausible view. Assessing Officer having accepted such contention after due inquiries, it was not open for the Commissioner to take such order in revision. The Tribunal also noted that the Commissioner himself had not come to a conclusion that in law the income of the assessee was taxable as income from other sources. He had merely asked the Assessing Officer to undertake the exercise of hearing and deciding the issue afresh.

4. Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere with the view of the Tribunal. The question whether the income should be taxed as business income or as arising from the other

source was a debatable issue. The Assessing Officer has taken a plausible view. More importantly, if the Commissioner was of the opinion that on the available facts from record it could be conclusively held that income arose from other sources, he could and ought to have so held in the order of revision. There was simply no necessity to remand the proceedings to the Assessing Officer when no further inquiries were called for or directed.

5. In the result, no question of law arises. Income Tax Appeal is dismissed.

(B.P.COLABAWALLA,J.) **(AKIL KURESHI,J.)**

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