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

INCOME TAX APPEAL NO.323 OF 2017

Principal Commissioner of
Income-Tax-4 .... Appellant

versus

Smt. Vimla S. Jajoo ... Respondent

…....

- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.Madhur Agrawal i/b. Mint & Confreres, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 09th APRIL, 2019.

P.C. :

1. This Appeal is filed by the Revenue to challenge the judgment of Income Tax Appellate Tribunal. Following questions are presented for our consideration;

"(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in deleting the disallowance made by the A.O. of

STCG amounting to Rs.3,01,14,251/- as Business Income?

(b) *"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT further erred in considering the deposits written off of Rs.7,50,000/- as Business Loss?"*

2. Insofar as question (a) is concerned, We have discussed the issue of income from sale of shares to be treated as capital gain for business income in assessee's own case No.264/17 and 1460/17. By an order passed on 09/04/2019, we have dismissed the Revenue's Appeal on identical issue. Without recording separate reasons, therefore, this question is not entertained.

3. Insofar as question (b) is concerned, the same pertains to sum of Rs.7.50 lakhs, which the assessee claimed as a business loss. The assessee at the relevant time was a Stock Broker registered with Calcutta Stock Exchange. The assessee had deposited a sum of Rs.10.50 lakhs with the Stock Exchange

as a part of the requirement. A part of this amount was forfeited/utilized by the Stock Exchange towards settlement guarantee fund and base minimum capital towards payment crisis. The assessee argued that this deposit was made in course of business and the loss is therefore incidental to the business. The argument was not accepted by the Assessing Officer, but was accepted by the CIT Appeals and the Tribunal. We see no error in the view of the authorities.

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

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**