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

INCOME TAX APPEAL NO.338 OF 2017

Pr. Commissioner of Income Tax-4 .... Appellant
versus
Smt. Vimla S. Jajoo ... Respondent

…….

- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.Percy Pardiwalla, Senior Counsel, a/w Mr.Madhur Agrawal, a/w Mr.Upendera Lokegaonkar i/b. Mint & Confreres, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 15th MARCH, 2019.

P.C. :

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

"Whether on the facts and 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.5,60,07,489/- as Business Income?"

2. The Respondent Assessee is an individual. The issue raises out of her return of income for the year 2006-07. She had offered the gain of Rs.5.60 Crores (rounded of) upon sale of

shares as short term capital gain. The Assessing Officer however held that the same would give rise to her business income. CIT (Appeal) and tribunal held in favour of the assessee mainly on the ground that in the earlier assessment years the assessee had consistently shown the receipts of sale of share as capital gain which the revenue had also accepted.

3. We do not find any error in view of tribunal. The tribunal had noted that in the earlier years the assessee had suffered loss. Therefore in the current year if the income was to be treated as business income, capital loss of the earlier year would not be assessable against such income. It appears that the Assessing Officer desired to tax income as business income in the current year, in view of the change in tax rates, between short term capital gain and business income, which in the earlier years was same.

4. In such circumstances, no question of law arises, the Appeal is dismissed.

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