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

INCOME TAX APPEAL NO.463 OF 2017

Principal Commissioner of Income Tax-31 … Appellant
versus
Satyaprakash Singh … Respondent

Mr. Arvind Pinto, for Appellant.
Ms. Neelam C. Jadhav, for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 22nd JULY, 2019

P.C.:

1. This Appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). The Appeal arises out of the return of income filed by the Respondent-assessee for the assessment year 2007-08. The question involved is of taxing the capital gain arising at the hands of the assessee for transfer of a long term capital asset. By the impugned judgment, the Tribunal held that the same could be taxed only in the assessment year 2003-04 and not in the present assessment year. The Tribunal relied on a decision of this Court in the case of Chaturbhu Dwarkadas Kapadia V/s. Commissioner of Income Tax[1].

2. In this context, the main anxiety for the Revenue was that since the Tribunal in the impugned judgment had not given consequential directions for taxing such gain

1 [2003] 260 ITR 491 (Bom.)

in hands of the assessee in the year 2003-04, the assessee could take an objection of the assessment for the said year having become time barred, prohibiting the assessing officer from taxing the income in the said year. The case of the revenue appears to be that if the Tribunal had given such consequential directions, the Assessing Officer in terms of Section 150 of the Income Tax Act, 1961 could have brought such income to tax at least in the assessment year 2003-04.

2. In our order dated 10th June, 2019, we had summerized the position as under and called upon the Respondent to be ready for final disposal of the Appeal :

> *"1. This appeal is filed by the Revenue.*
>
> *2. The question relates to in which assessment year, the assessee's transaction of sale of immovable property can be brought to capital gain tax. Initially, the assessee had contended that the same would be in assessment year 2007-08. However, much later before the Income Tax Appellate Tribunal, the assessee raised additional contention stating that the development agreement was executed during the period relevant to assessment year 2003-04. The assessee relied on the decision of the Division Bench of this Court in case of Chaturbhuj Dwarkadas Kapadia Vs. CIT (Bom) and pointed out that even possession of the land in question was handed over to the developer. The Tribunal allowed the assessee to raise the additional contention and also accepted the contention placing reliance on the decision of this Court in case of Chaturbhuj Dwarkadas Kapadia (supra). The Tribunal by the impugned judgment held that the capital gain tax could have been levied only in the assessment for the assessment year 2003-04.*

> *3. Learned counsel for the Revenue submitted that even if the Tribunal was to make such a declaration, particularly looking to the fact that the assessee had raised such a contention for the first time before the Tribunal materially altering his own contention earlier, the Tribunal ought to have given consequential directions for taxing the capital gain in the assessment year 2003-04 failing which the assessee would be liable to pay no capital gain tax either in assessment year 2007-08 or in the assessment year 2003-04.*
>
> *4. Though served the Advocate's notice, no one appeared for the respondent.*
>
> *5. Let there be notice of final disposal returnable on 8th July, 2019. To be placed on admission board.*
>
> *6. Revenue shall ensure service of this order to the respondent."*

3. Consequently, we have heard the Counsel for the parties. We are of the opinion that even if the Tribunal found the facts of the present case akin to those arising in the decision of Chaturbhuj Dwarkadas Kapadia (supra), in facts of the case, the consequential directions for taxing the income in the assessment year 2003-04 outhg to have been granted. In absence of any such specific direction, there is a risk of the assessee arguing that the assessing officer cannot reopen the assessment, since there is no directions issued by the Tribunal for taxing the income for the said year. To put the entire issue beyond the possibility of doubt or debate, we issue such directions. We are informed that subsequent to the Tribunal passing the impugned judgment, the

Assessing Officer has already passed a fresh order of the assessment for the assessment year 2003-04 taxing the capital gain in the said year. It is therefore, clarified that the above direction would operate from the date of the judgment of the Tribunal, which in any case the Tribunal ought to have issued. In the result, the Appeal is disposed of in above terms.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**