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

**INCOME TAX APPEAL NO.221 OF 2017**

The Pr.Commissioner of Income Tax-9 … Appellant

V/s.

M/s Capita India Private Limited … Respondent

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Mr.Tejveer Singh for the Appellant.
Mr.Madhur Agrawal i/by Mr.Atul Jasani for the Respondent.

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**CORAM : AKIL KURESHI AND**
**SARANG V. KOTWAL, JJ.**
**DATE : APRIL 22, 2019.**

**P.C.:-**

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

> "Whether on the facts and circumstances of the case and in law, the order of the ITAT has erred in restricting itself to the technicality and the applicability of provisions of sec.69C without examining as to whether writing of goodwill has resulted in siphoning of funds or not?"

2. Brief facts are as under:-

The respondent-assessee is a private limited company. During the period relevant to the assessment year in question i.e. assessment year 2010-11, the assessee had acquired a unit on slump sale basis. The sale consideration included sum of Rs.44.22 crores by way of goodwill. In its account book the assessee had written off the said goodwill amount of Rs.44.22 crores. However, by claiming deduction under Section 10A of the Income Tax Act, 1961, the assessee had arrived at a total profit by adding the portion of the goodwill. The Assessing Officer objected to this and held that the entire exercise was a colourbale device to avoid tax. He made additions by invoking Section 69C of the Act. The Tribunal by impugned judgment deleted such additions observing inter-alia that the goodwill written off has been added back and adjusted. It was under Section 10A of the Act, which the assessee was undoubtedly entitled to. Quite apart from not finding any error in the view of the Tribunal, we are surprised how Assessing Officer invoked Section 69C of the Act. This provision would be applicable where the assessee had incurred any expenditure and he offers or no explanation for such expenditure or part thereof or the explanation offered by the assessee is not satisfactory. In the present case, the assessee has made payments through cheque, at the time of execution of the agreement. The Assessing Officer has not doubted the source of such payment. In the result, Appeal is dismissed.

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

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