Pradnya Bhogale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1741 OF 2017

The Pr. Commissioner of Income Tax (Central)
Pune ..Appellant
vs.
Adar Cyrus Poonawalla ..Respondent

…........

Mr. Sham V. Walve for Appellant.
Mr. Atul K. Jasani for Respondent.

…......…

CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 15 JANUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. The Appellant challenges the order passed by the Income Tax Appellate Tribunal dated 2 February 2017 in appeal for the Assessment Year 2007-08.

3. The Appellant-Revenue has framed the the following questions as substantial questions of law :-

> "A. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAt was justified in law by holding that the profit on sale of shares of M/s City

Park Pvt. Ltd. is Capital gain when there was clear cut adventure in the nature of trade on the part of the assessee?

B. Whether on the facts and circumstances of the case and in law, without prejudice to the above ground, the Hon'ble ITAT was justified in holding that the capital gain on account of sale of shares of M/s. City Parks Pvt Ltd, is LTCG when the underlying asset which got transferred due to sale of shares was Land and holding period of which was less than 36 months?

C. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in not upholding the finding of the AO that transaction of sale of shares of HCL Technologies Ltd. reflect active involvement of the assessee as a trader rather than as an investor i.e. transaction in the shares of HCL Technologies Ltd. is a business transaction?

D. Whether on the facts and circumstances of the case and in law, without prejudice to the above ground the Hon'ble ITAT was justified in not upholding the stand of the AO that the motive for carrying out the aforesaid set of transaction in the shares of HCL Technologies Ltd was to incur loss on account of bonus striping and then set off such loss against the long term capital gain accruing to the assessee on sale of shares of City Park Pvt Ltd with a motive to evade tax?"

4. The learned counsel for the parties points out that the Tribunal in the impugned order has referred its own decision in respect of the Respondent-Assessee for the year 2007-08 deciding the issue. It is common ground at the bar that the questions of law

raised above stand concluded against the Revenue in view of the decision of this Court in Income Tax Appeal No. 226 of 2016. In view of this position the questions as framed do not give rise to any substantial question of law.

5. The Appeal is accordingly dismissed.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**