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

INCOME TAX APPEAL NO.169 OF 2018

Principal Commissioner of Income Tax – 15 ….Appellant

V/s.

Just Textiles Limited ….Respondent

Mr. Suresh Kumar for appellant.
None for respondent.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 12th APRIL 2022

P.C.:

1 The following substantial questions of law are proposed in this appeal :

> *(a) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in law in holding that there is no escapement of income for AY 2008-2009 and there is no merit for reopening the assessment for AY 2008-2009?*
>
> *(b) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was correct in applying provision of section 50 of the Act since land is not a depreciable assets, provisions of section 50 cannot be applied to this sale, the capital gain ought have been computed as per section 48 of the Income Tax Act?*

2 We have considered the impugned order with the assistance of Mr. Suresh Kumar and we find there is nothing perverse in the impugned order that requires our interference.

3 The assessee, i.e., respondent, was aggrieved for reopening of the assessment completed under Section 143(3) of the Income Tax Act,

1961 (the Act) without considering the facts and circumstances of the case. On merits also the assessee was aggrieved for addition made on account of long term capital gains for sale of land. The assessee's case is that the amount of capital gains was already taxed in the Assessment Year 2007-2008 and again making an addition for the same income would amount to double taxation of the very same income which is not permissible under the Act.

4 The Income Tax Appellate Tribunal (ITAT), after going through the records and proceedings and after considering the matter in detail, has come to a conclusion and rightly so that there was no tangible material to reopen the assessment for Assessment Year 2008-2009 and the Assessing Officer has only changed his opinion which is not permissible. Reliance has been placed on the decision of the Apex Court in ***CIT V/s. Kelvinator India Limited***[1]. The ITAT has concluded that in Assessment Year 2007-2008 capital gain so offered by the assessee was accepted by the Assessing Officer. Thereafter, without any tangible material, the Assessing Officer has changed his opinion and recorded a satisfaction that income should be taxable in the Assessment Year 2008-2009 and not in the Assessment Year 2007-2008. The attempt to reopen is on the very same income and therefore, there was change of opinion on the very same set of facts and circumstances.

1. 320 ITR 561 (SC)

5 Even on merits, the ITAT has found that the Assessing Officer has wrongly applied provisions of Section 48 to compute capital gain instead of Section 50 applicable to depreciable assets. ITAT has accepted assessee's contention that the sale consideration was consolidated for land as well as building and hence, assessee has computed capital gain under Section 50 as there was no authentic method to bifurcate the sale consideration into land and building separately and therefore, the assessee computed capital gain under Section 50. ITAT has also accepted that the capital gain computed under Section 50 was having higher burden of tax as rate of tax on short term capital gain is higher than the long terms capital gain and under Section 50, benefit of indexation is also not allowable.

6 In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

7 The appeal is devoid of merits and it is dismissed with no order as to costs.

(N.R. BORKAR, J.) **(K.R. SHRIRAM, J.)**