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

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INCOME TAX APPEAL NO. 2 OF 2018

The Pr. Commissioner of Income Tax-1,
Pune ...Appellant

vs.

Asara Sales and Investment Pvt. Ltd. ...Respondent

Mr.Sham V. Walve for appellant.

Mr.Mihir Naniwadekar a/w. Mr.Rohan Deshpande, Mr.Suyog Bhave i/b Ms.Farzeen Khambatta for respondent.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATE : 16 FEBRUARY, 2022

P.C.:

1. The following questions of law are proposed by appellant :

(A) Whether the sale of listed shares of a group concern in off market mode was not a device only to circumvent the provisions of section 10(38) of the Income Tax Act, 1961 and to set off the resultant long term capital loss against the long term capital gains arising from sale of unlisted shares on the same day?

(B) Whether the claim of assessee to adopt off market sale of shares to save a meager STT of Rs.2,20 Lakh can be allowed especially when there was a dubious intention to offset the capital gains against the capital loss?

(C) Whether there is such intention of the legislature to allow sale of shares through stock exchange in case of gain to claim benefit of exemption u/s. 10(38) but in case of losses; allow it to be sold through off market and pave the way for revenue leakages?

2. Respondent had sold certain shares of two companies in off market transaction to its subsidiary. In the sale of one, there was a gain. In the sale of other, there was a loss. Respondent set off the profit against the loss. The Assessing Officer's conclusion was, this was a colourable device to avoid capital gains tax.

3. We have heard the counsel for the parties and considered the orders passed by the Assessing Officer, Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal, Mumbai ('ITAT').

4. The ITAT has, after taking into consideration all facts and circumstances, accepted respondent's explanation for selling the shares to its subsidiary off market transaction. One primary point that impressed the ITAT in the case of respondent is that there was nothing contrary to provisions of law in the sale by respondent. We are in agreement with the conclusions arrived at by the ITAT.

5. In our view, the ITAT 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.

6. The appeal is devoid of merit and is dismissed with no order as to costs.

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