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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.226 OF 2006

The Commissioner of Income Tax

..Appellant

Vs.

M/s.Papilion Investments Pvt. Ltd.

..Respondent

Mr.Suresh Kumar for appellant.

CORAM :- V.C.DAGA &
J.P.DEVADHAR, JJ.

DATE : 28TH AUGUST, 2009

PC.

1. Heard learned Counsel for the parties.
2. The Tribunal, in paragraph No.9 of its order, has recorded a categorical finding, which reads as under:

9. In the case before us, and in view of the provisions of the Companies Act, 1956, it is not possible for the PFIPL to have less than two shareholders. As a matter of fact, there cannot be any company in India which has less than two members i.e. shareholders. Now the requirement of Section 47(v) is that the whole of the share capital of the subsidiary company should be held by the holding company. The whole of the share capital being held by the holding company is certainly not the same thing as whole of the share capital being held in the name of the holding company. In fact, that situation is a legal impossibility in India. In case one is to proceed on the basis that entire share capital of the subsidiary company should be held in the name of the holding company, there cannot be any situation in which section 47(v) can apply. That is certainly not an interpretation which can be termed as *ut res magis valeat quam pereat*, i.e. to make the statute effective rather than making it redundant. As held by Hon'ble Supreme court, in the case of CIT Vs. Teja Singh (35 ITR 408), a construction which results in rendering a provision redundant must be avoided. For this reason alone, the interpretation canvassed by the revenue is to be rejected.

3. Having seen the finding recorded by the Tribunal, no fault can be found with the view taken by the Tribunal. In this view of the matter, appeal stands dismissed for want of substantial question of law with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA, J.)