

FARAD CONTINUATION SHEET No.  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

INCOME TAX APPEAL NO. 18/2017

(SANJAY BIMALCHAND JAIN L/H SHANTIDEVI BIMALCHAND JAIN **VERSUS** THE PR.  
COMMISSIONER OF INCOME TAX-I, NAGPUR & ANOTHER)

-----  
Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
-----

Court's or Judge's orders

-----  
Shri A.B. Patil, counsel for the appellant.

**CORAM : SMT. VASANTI A NAIK AND**  
**MRS. SWAPNA JOSHI, JJ.**

**DATE : APRIL 10, 2017.**

By this income tax appeal, the appellant-assessee challenges the orders of the Assessing Officer, the Commissioner of Income Tax as also the Income Tax Appellate Tribunal holding that the assessee had traded in shares and the income was liable to be taxed as 'business' income.

The assessee had on the advice of an income tax consultant purchased shares of two penny stock Kolkata based companies i.e., 8000 shares at the rate of Rs.5.50 per share on 08.08.2003 and 4000 shares at the rate of Rs.4/- per share on 05.08.2003 from Syncom Marketing Pvt. Ltd. and of Skyzoom Distributors Pvt. Ltd. the payments were made by the assessee in cash for acquisition of shares of both the companies. The address of both the companies was interestingly, the same. The authorized signatory of both the companies was also the same person. The purchase of shares of both the companies was done by the assessee through Global Stock and Securities Ltd and the address of the said broker was incidently the address of the two companies. Both the companies intimated the assessee on 07.04.2004

regarding the merger of the companies with another company, viz. Khoobsurat Limited, Kolkata and the assessee received the shares of the new company in the ratio of 1:4 of the number of shares of the previous two companies held by the assessee. The assessee sold 2200 shares at an exorbitant rate of Rs.486.55 per share on 07.06.2005 and 800 shares on 20.06.2005 at the rate of Rs.485.65. The shares were sold through another broker, viz. Ashish Stock Broking Private Limited. The proceeds from the aforesaid sale transaction were directly credited by the broker in the Savings Bank Account of the assessee in the Union Bank of India. The assessing officer did not accept the case of the assessee that she was entitled to exemption under Section 10(38) of the Income Tax Act. The assessing officer held that the aforesaid transactions of purchase of two penny stock shares for Rs.60,000/-, the merger of the companies with a new company and the sale of the shares for Rs.11,58,930/- fell within the ambit of adventure in the nature of trade and the assessee had profited by Rs.13,98,930/-. The assessing officer, therefore, brought the aforesaid amount to tax under the head 'business income'.

Being aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The appeal filed by the assessee was dismissed and so was the subsequent appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal.

On hearing the learned counsel for the assessee and on a perusal of the orders of the income tax authorities, it appears that there is no scope for interference with the said

orders in this appeal. By referring to the aforesaid facts, which are narrated in the earlier part of this order, the authorities found that the assessee had made investment in two unknown companies of which the details were not known to her. It was held that the transaction of sale and purchase of shares of two penny stock companies, the merger of the two companies with another company, viz. Khoobsurat Limited did not qualify an investment and rather it was an adventure in the nature of trade. It was held by all the authorities that the motive of the investment made by the assessee was not to derive income but to earn profit. Both the brokers, i.e. the broker through whom the assessee purchased the shares and the broker through whom the shares were sold, were located at Kolkata and the assessee did not have an inkling as to what was going on in the whole transaction except paying a sum of Rs.65,000/- in cash for the purchase of shares of the two penny stock companies. The authorities found that though the shares were purchased by the assessee at Rs.5.50 Ps. Per share and Rs.4/- per share from the two companies in the year 2003, the assessee was able to sell the shares just within a years time at Rs.486.55 Ps and Rs.485.65 Ps per share. The broker through whom the shares were sold by the assessee did not respond to the assessing officer's letter seeking the names, addresses and the bank accounts of the persons that had purchased the shares sold by the assessee. The authorities have recorded a clear finding of fact that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to

how the shares in an unknown company worth Rs.5/- had jumped to Rs.485/- in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share worth Rs.5/- of a little known company would jump from Rs.5/- to Rs.485/-. The findings recorded by the authorities are pure findings of facts based on a proper appreciation of the material on record. While recording the said findings, the authorities have followed the tests laid down by the Hon'ble Supreme Court and this Court in several decisions. The findings do not give rise to any substantial question of law. The judgments reported in **(2012) 20 Taxman.com 529 (Bombay)** (*CIT Versus Jamnadevi Agrawal*), **(1957) 31 ITR 294 (Bombay)** (*Puranmal Radhakishan Versus CIT*), **(1970) 77 ITR 253 (SC)** (*Raja Bahadur Versus CIT*) and **(2015) 235 Taxman 1 (Bom)** (*CIT Versus Smt.Datta M. Shah*) and relied on by the learned counsel for the assessee are distinguishable on facts and cannot be applied to the case in hand.

Since no substantial question of law arises in this appeal, the appeal is dismissed with no order as to costs.

**JUDGE**

**JUDGE**

APTE