



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/TAX APPEAL NO. 204 of 2020

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-1
Versus
PARASBEN KASTURCHAND KOCHAR

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Appearance:
MRS MAUNA M BHATT(174) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 17/09/2020

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. This appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act 1961") is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench dated 20-2-2020 in the ITA No.549/Ahd/2018 for the A.Y. 2014-15. The Revenue has proposed the following question of law for the consideration of this Court:-

"Whether the Appellate Tribunal was right in law and on facts in deleting the addition of Rs.9,70,468/- made on account of LTCG claimed as exempt u/s. 10(38) of the Act without appreciating the fact that the transaction was pre-arranged as well as sham and was carried out through penny scripts companies / paper companies?"

2. We take notice of the fact that the issue in the present appeal is whether the assessee earned long term capital gain



through transactions with bogus companies. In this regard, the finding of fact recorded by the Tribunal in paras 9, 10 and 11 reads thus:-

“9. In our considered opinion, in such case assessee cannot be held that he earned Long Term Capital gain through bogus company when he has discharged his onus by placing all the relevant details and some of the shares also remained in the account of the appellant after earning of the long term capital gain.

10. Learned A.R. contention is that no statement of the Investigation Wing was given to the assessee which has any reference against the assessee.

11. In support of its contention, learned A.R. also cited an order of Coordinate Bench in ITA No.62/Ahd/2018 in the matter of Mohan Polyfab Pvt. Ltd. Vs. ITO wherein ITAT has held that A.O. should have granted an opportunity to cross examine the person on whose statement notice was issued to the assessee for bogus long term capital gain. But in this case, neither statement was supplying to the assessee nor cross examination was allowed by the learned A.O. Therefore, in our considered opinion, assessee has discharged his onus and no addition can be sustained in the hands of the assessee.”

3. Thus, the Tribunal has recorded the finding of fact that the assessee discharged his onus of establishing that the transactions were fair and transparent and further, all the relevant details with regard to such transactions were furnished before the Income Tax authorities and the Tribunal also took notice of the fact that some of the shares also remained in the account of the appellant.



4. We take notice of the fact that the assessee has a Demat Account maintained with the ICICI Securities Ltd. and has also furnished the details of such bank transactions with regard to the purchase of the shares. In the last, the Tribunal took notice of the fact that the statements recorded by the investigation wing of the Revenue with regard to the Tax entry provided were informed to the assessee despite giving him opportunity to meet such an allegation. In the overall view of the matter, we believe that the proposed question cannot be termed as a substantial question of law for the purpose of maintaining the appeal under Section 260-A of the Act, 1961.

5. In the result, this appeal fails and is hereby dismissed.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

NAIR SMITA V./Radhan