Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4399 OF 2007

The Commissioner of Income Tax,
Ahmedabad ....Appellant(s)

VERSUS

Equinox Solution Pvt. Ltd. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed by the Revenue (Income Tax Department) against the order dated 29.07.2003 passed by the High Court of Gujarat at Ahmedabad in I.T.A. No. 59 of 2003 whereby the High Court dismissed the Revenue's appeal on the ground that the appeal does not involve any substantial question of law under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2) We herein set out the facts, in brief, to appreciate the issues involved in this appeal.

3) The respondent-assessee was engaged in the business of manufacturing sheet metal components out of CRPA & OP sheds at Ahmadabad. The respondent decided to sell their entire running business in one go. With this aim in view, the respondent sold their entire running business in one go with all its assets and liabilities on 31.12.1990 to a Company called "Amtrex Appliances Ltd" for Rs.58,53,682/-.

4) The respondent filed their income tax return for the Assessment Year 1991-1992. In the return, the respondent claimed deduction under Section 48 (2) of the Act as it stood then by treating the sale to be in the nature of "slump sale" of the going concern being in the nature of long term capital gain in the hands of the assessee.

(5) The Assessing Officer by his order dated 04.03.1994 did not accept the contention of the assessee in claiming deduction. According to the Assessing Officer, the case of the assessee was covered under Section 50 (2) of the Act because it was in the nature of short term capital gain as specified in Section 50 (2) of the Act and hence did not fall under Section 48 (2) of the Act as claimed by the assessee. The Assessing Officer accordingly reworked the claim of the deduction treating the same to be falling under Section 50 (2) of the Act and framed the assessment order.

(6) The assessee, felt aggrieved, filed appeal before the CIT (appeals). By order dated 06.10.1995, the Commissioner of Appeals allowed the assessee's appeal in so far as it related to the issue of deduction. He held that when it is an undisputed fact that the assessee has sold their entire running business in one go with its assets and liabilities at a

slump price and, therefore, the provisions of Section 50 (2) of the Act could not be applied to such sale. He held that it was not a case of sale of any individual or one block asset which may attract the provisions of Section 50 (2) of the Act. He then examined the case of the assessee in the context of definition of "*long term capital gain*" and "*short term capital asset*" and held that since the undertaking itself is a capital asset owned by the assessee nearly for six years and being in the nature of long term capital asset and the same having been sold in one go as a running concerned, it cannot be termed a "*short terms capital gain*" so as to attract the provisions of Section 50 (2) of the Act as was held by the Assessing Officer. The CIT (appeals) accordingly allowed the assessee to claim the deduction as was claimed by them before the Assessing Officer.

7) The Revenue, felt aggrieved of the order of the CIT (appeal), filed appeal before the Income Tax

Appellate Tribunal. By order dated 27.06.2002, the Tribunal concurred with the reasoning and the conclusion arrived at by the Commissioner of Appeal and accordingly dismissed the Revenue's appeal.

8) The Revenue, felt aggrieved of the order of the Tribunal, carried the matter to the High Court in further appeal under Section 260-A of the Act. By impugned order, the High Court dismissed the appeal holding that the appeal does not involve any substantial question of law within the meaning of Section 260-A of the Act. It is against this order the Revenue felt aggrieved and carried the matter to this Court in appeal by way of special leave.

9) Heard Mr. K. Radhakrishnan, learned senior counsel for the appellant and Mr. Inder Paul Bansal, learned counsel for the respondent-assessee.

10) Having heard the learned Counsel for the parties and on perusal of the record of the case, no fault can be found in the reasoning and the conclusion arrived at by the CIT (appeal) in his order which, in our view, was rightly upheld by the Tribunal and then by the High Court calling no interference by this Court in this appeal.

11) In our considered opinion, the case of the respondent (assessee) does not fall within the four corners of Section 50 (2) of the Act. Section 50 (2) applies to a case where any block of assets are transferred by the assessee but where the entire running business with assets and liabilities is sold by the assessee in one go, such sale, in our view, cannot be considered as "*short-term capital assets*". In other words, the provisions of Section 50 (2) of the Act would apply to a case where the assessee transfers one or more block of assets, which he was using in running of his business. Such is not the

case here because in this case, the assessee sold the entire business as a running concern.

12) As rightly noticed by the CIT (appeal) that the entire running business with all assets and liabilities having been sold in one go by the respondent-assessee, it was a slump sale of a "*long-term capital asset*". It was, therefore, required to be taxed accordingly.

13) Our view finds support with the law laid down by this Court in **Commissioner of Income Tax, Gujarat** vs. **Artex Manufacturing Co.** [1997(6) SCC 437 CIT].

14) In **Premier Automobiles Ltd**. vs. **Income Tax Officer & Anr.,** 264 ITR 193 (Bombay) also, the Division Bench of the Bombay High Court examined this question in detail on somewhat similar facts and has taken the same view. The Learned Judge S.H Kapadia - (as His Lordship then was as Judge of the Bombay High Court and later became CJI)

speaking for the Bench aptly explained the legal position to which we concur as it correctly summarized the legal position applicable to such facts.

15) Learned Counsel for the appellant (Revenue) was not able to cite any decision taking a contrary view nor was he able to point out any error in the decisions cited at the Bar by the assesse's counsel referred supra.

16) In the light of foregoing discussion, we find no merit in the appeal which fails and is accordingly dismissed.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
April 18, 2017