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

INCOME TAX APPEAL NO. 280 OF 2016

Principal Commissioner of Income Tax-8 .. Appellant

v/s.

M/s. Quest Investment Advisors Pvt. Ltd. ..Respondent

Mr. N.C. Mohanty for the appellant
Mr. Ajaykumar R. Singh for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE,
J.J.

DATED : 28th JUNE, 2018.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 20th May, 2018 passed by the Income Tax Appellate Tribunal (the Tribunal) for Assessment Year 2008-09.

2. The Revenue urges the following questions of law for our consideration :-

> *(i) Whether on the fact and circumstances of the case and in law, the Tribunal was justified in deleting the disallowance made u/s 37(1) without appreciating the facts of the case and legal matrix as clearly brought out by the AO and the CIT(A) ?*

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in following the rule of consistency and the case of Radhasoami Satsang without going into merits of the case?

3. The respondent is engaged in the business of equity research, investment advisory services and running portfolio management services. During the subject assessment year, the respondent assessee in its return of income showed professional income of Rs.1.31 crores and short term capital gain of Rs.6 crores. As was the practice for the earlier assessment years and accepted by the Revenue, all the expenses was set off against the professional business income. However, the Assessing Officer sought to allocate the expenditure between earning of capital gains and professional income. Thus, an expenditure of Rs.88.05 lakhs claimed against professional income was disallowed by the assessment order dated 15th November, 2010 under Section 143(3) of the Act.

4. Being aggrieved, the respondent carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 21st November, 2011, the respondent's appeal was dismissed.

5. Thus, the respondent carried the issue in further appeal to the

Tribunal. The impugned order of the Tribunal without going to the merits of the action of the Assessing Officer in allocating the expenses between the professional income and capital gains, proceeded to allow the appeal on the basis of principle of consistency. It observed that for the assessment years relating to Assessment Years 1995-96 to 2012-13, no such allocation of expenses between professional income and the earning on account of capital gain was made. All expenses were allowed to be set off against the professional income. It is only for two assessment years namely Assessment Years 2008-09 and 2007-08 that the Assessing Officer had done this exercise of allocating the expenditure under the heads of business income and capital gain. The Revenue before the Tribunal as recorded in the impugned order, was not able to point out any distinguishing facts in the subject assessment year, which would warrant a different view from that taken in the earlier and subsequent assessment where no allocation of expenditure was done between various heads of income. Therefore, on application of the principles of consistency following the decision of the Apex Court in ***Radhasoami Satsang Vs. Commissioner of Income Tax, 193 ITR 321*** the respondent's appeal was allowed.

6. Mr. Mohanty, learned Counsel appearing for the Revenue urges

that the decision of the Apex Court in *Radhasoami Satsang* (supra) would have no application to the facts of the present case for two reasons viz. (a) that the decision itself states that it is restricted to the facts of the case before it and would not have general application; and (b) Besides, it is submitted that the issue of expenses to be allowed and / or income to be assessed would be a subject matter of separate consideration for each year that is unlike an issue deciding a status of a person and / or a property which would in the absence of any change in law and / or facts would permeate through various years. Thus, the impugned order of the Tribunal is not sustainable and the appeal requires admission.

7. We note that the impugned order of the Tribunal records the fact that the Revenue Authorities have consistently over the years i.e. for the 10 years years prior to Assessment Years 2007-08 and 2008-09 and for 4 subsequent years, accepted the principle that all expenses which has been incurred are attributable entirely to earning professional income. Therefore, the Revenue allowed the expenses to determine professional income without any amount being allocated to earn capital gain. In the subject assessment year, the Assessing Officer has deviated from these principles without setting out any reasons to deviate from an accepted

principle. Moreover, the impugned order of the Tribunal also records that the Revenue was not able to point out any distinguishing features in the present facts, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. So far as the decision of *Radhasoami Satsang* (supra) is concerned, it is true that there are observations therein that restrict its applicability only to that decision and the Court has made it clear that the decision should not be taken as an authority for general applicability.

8. However, subsequently the Apex Court in ***Bharat Sanchar Nigam Ltd. Vs. Union of India 282 ITR 273*** has after referring to the decision of *Radhasoami Satsang* (supra) has observed as under :-

> *"20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision of where the earlier decision is per incuriam.*

> *However, these are fetters only on a co-ordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction."*
>
> *(emphasis supplied)*

9. The principle accepted by the Revenue for 10 earlier years and 4 subsequent years to the Assessment Years 2007-08 and 2008-09 was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains. Once this principle was accepted and consistently applied and followed, the Revenue was bound by it. Unless of course it wanted to change the practice without any change in law or change in facts therein, the basis for the change in practice should have been mentioned either in the assessment order or atleast pointed out to the Tribunal when it passed the impugned order. None of this has happened. In fact, all have proceeded on the basis that there is no change in the principle which has been consistently applied for the earlier assessment years and also for the subsequent assessment years. Therefore, the view of the Tribunal in allowing the respondent's appeal on the principle of consistency cannot in the present facts be faulted with, as it is in accord with the Apex Court decision in Bharat Sanchar Nigam Ltd. (supra).

10. Accordingly, the question as proposed do not gives rise to any substantial question of law. Thus, not entertained.

11. Appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**