

Transfer of division in exchange of shares only couldn't be held as slump sale; rules HC

Summary – The High Court of Bombay a recent case of Bharat Bijlee Ltd., (the Assessee) held that where assessee transferred its lift division to another company in terms of scheme of arrangement under section 391, read with section 394 of Companies Act, 1956, in view of fact that consideration for said transfer was not determined by parties in terms of money but its disbursement was to be in terms of allotment or issue of bonds/preference shares, it was to be regarded as a case of exchange and not a sale and, thus, provisions of section 2(42C) did not apply to assessee's case.

Facts

- During the assessment year in question, the assessee transferred its lift division to T Ltd. The said transfer took place under the Scheme of Arrangement by invoking section 391, read with section 394 of the Companies Act, 1956.
- The Assessing Officer opined that the transfer of Lift Division was a slump sale under section 2(24C) and was taxable in terms of section 50B.
- The Tribunal held that it was not a case where the consideration was determined and decided by parties in terms of money but its disbursement was to be in terms of allotment or issue of bonds/preference shares. Thus, it was a case of exchange and not a sale. Accordingly, the Tribunal held that section 2(42C) was inapplicable and impugned addition made by the Assessing Officer was not sustainable.
- On revenue's appeal:

Held

- This finding of fact cannot be said to be perverse or based on no material. It also cannot be said to be vitiated by an error of law apparent on the face of the record. It is in these circumstances, this appeal does not raise any substantial question of law.
- In the result, the revenue's appeal is dismissed.