

Conditional transfer of shares couldn't be held as benefit or perquisite if assessee didn't satisfy such conditions

Summary – The High Court of Bombay in a recent case of Ashish P. Deora, (the Assessee) held that where one 'G', as part of contract, had given certain shares to assessee subject to certain condition and assessee failed to abide by condition and returned shares to 'G' and, provisions of section 28(iv) would not be applicable

Facts

- The assessee had got a works contract from one 'G.' As part of the contract, 'G' had given certain shares to the assessee subject to the condition that he had to execute the contract within the stipulated period.
- The assessee failed to abide by the condition and eventually returned the shares to 'G'.
- The Tribunal held that if the transfer was conditional and if the assessee failed to comply with condition and, therefore, the shares could not be transferred in his name, then the provisions of section 28(iv) would not be applicable. It relied upon the decision of the Gujarat High Court rendered in the case of *CIT v. Kaizen Commercial (P.) Ltd.* [IT Appeal No. 94/2012, dated 24-3-2014].
- On appeal to High Court:

Held

- Section 2(24)(vd) refers to the value of any benefit or perquisite taxable under clause (iv) of section 28. That is income in the inclusive definition. Section 28(iv) is relied upon in the case of *Kaizen Commercial (P.) Ltd. (supra)* as also in the instant case. The income chargeable to income-tax under the head 'profits and gains' includes the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. Finding that such benefit or perquisite, whether convertible into money or not, has not been derived by the assessee, section 28(iv) cannot be invoked as far as the assessee is concerned. There was a finding of fact that no benefit or perquisite was arising from the deal in question. In such circumstances, nothing more need to be investigated or probed further as observed in the case of *Kaizen Commercial (P.) Ltd. (supra)*.
- In view of the aforesaid, there was no substantial question of law arising for determination and consideration in the instant appeal.