**(2000) 11 SC CK 0078**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 7597 of 1993

Commissioner of Income Tax APPELLANT

Vs

Vimal Lalchand Mutha RESPONDENT

**Date of Decision :** 15-11-2000

**Acts Referred:**

**Citation :** (2002) 10 SCC 758

**Hon'ble Judges :** S. P. Bharucha, J;D. P. Mohapatra, J

**Bench :** Division Bench

**Advocate :** T.L.V. Iyer, S.W.A. Quadri, Bipul Kumar and S. K. Dwivedi, for the Appellant; Ex parte, for the Respondent

## Judgement

1. The Revenue is in appeal against an order of a Division Bench of the High Court at Bombay rejecting its application under Section 256(2) of the Income Tax Act. The questions, which the Revenue sought reference of, read thus :-

"(a) Whether on the facts and in the circumstances of the case and on a correct interpretation of various clauses in the purchase agreement dated 4-12-78 entered into by the assessee with M/s. Bharat Trading Corporation, Bombay for purchase of a flat on 11th floor at 112A, Mittal Towers, Nariman Point, Bombay, the Tribunal was justified in holding that the assessee acquired an immovable property on 4-12-76 which had a marketable title, when, in fact, what the assessee acquired under the agreement was only to purchase the immovable property on a future date subject to the fulfilment of conditions laid down in the said agreement?

(b) Whether on the facts and in the circumstances of the case, and in view of the admitted position that the said flat was given possession to the assessee by the builders M/s. Bharat Trading Corporation only in June, 1981 after the final payments were made, the Tribunal was justified in law in holding that the assessee owned an immovable property on 4-12-1978 by virtue of entering into an agreement for purchase of the flat and this property had a marketable title and transferrable as such?

(c) Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in law in holding and directing the I.T.O. that the capital gains arising out of the sale of a flat at 112A, Mittal Towers, Nariman Point, Bombay on 28-4-1983 to M/s. Chanral Uttamchand, Bombay as long term capital gains in the Assessment Year 1984-85?"

2. Learned counsel for the Revenue fairly states that it would suffice if the only question that was considered was Question (c).

3. The High Court briefly set out the facts and held that the Tribunal had rightly come to the conclusion that the assessee''s capital gains were long term capital gains and that, in view of these facts and the findings recorded by the Tribunal, there was no statable question of law. We are not inclined to agree with the view taken by the High Court. A question of law does arise in Question (c) in that it relates to the correct interpretation to be placed upon the agreements that were entered into by the assessee.

4. We think, therefore, that the order under challenge must be set aside and the Tribunal directed to refer Question (c) to the High Court for its opinion, after drawing up a Statement of Case.

5. Order on the appeal accordingly.

6. No order as to costs