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

INCOME TAX APPEAL NO. 266 OF 2013

M/s. P. P. Holding Ltd.	**}**	**Appellant**
versus		
Asst. Commissioner of Income tax	**}**	**Respondent**

Mr. Mihir Naniwadekar for the Appellant.
Mr. Suresh Kumar for the Respondent.

CORAM :- S.C.DHARMADHIKARI &
S.P.DESHMUKH, JJ.
DATED :- JANUARY 9, 2015

P.C. :-

This Appeal challenges the order passed by the Income Tax Appellate Tribunal dated 28th August, 2012. That order is passed in Income Tax Appeal No. 809/PN/2009, for assessment year 2005-06.

2) According to the Assessee's Counsel Mr. Naniwadekar, this Appeal raises substantial questions of law. However, upon his attention being invited to the Judgment of this Court in the case of *Commissioner of Income Tax vs. Bharat R. Ruia (HUF)* reported in **(2011) 337 ITR 452 (Bom.)**, he submits that despite this Judgment, there are certain issues which could be raised and which are not covered by this Judgment.

3) Mr. Suresh Kumar appearing for the Department/Revenue would urge that the Judgment of this Court in the case of *Bharat R. Ruia* (supra) concludes all issues and against the Assessee.

4) Having perused the Judgment of the Tribunal we find that the Assessing Officer, during the course of assessment, found that the Assessee has shown a loss of derivative trading at Rs.4,24,49,729/- and held that it is the substantive loss. The transactions shown by the Assessee in the P & L account are in the nature of speculative transactions as defined under section 43(5) of the Income Tax Act. They do not fall in any of the exemption given in proviso to section 43(5) of the Act.

5) Precisely, this is the controversy dealt with in the case of *Bharat R. Ruia* (supra). We cannot ignore the binding precedent of this Court by entertaining the argument that the Division Bench did not have the benefit of complete argument or that though the transactions were derivative trading, there was an element in it which would not make it speculative. Such hairsplitting of binding precedent cannot be entertained. We cannot brush aside the binding precedent.

6) In view of the above discussion, we do not find that the Appeal raises any substantial question of law. it is accordingly dismissed.

(S.P.DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**