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

INCOME TAX REFERENCE NO. 456 OF 1997

The Commissioner of Income Tax, City-II,
Mumbai ..Applicant

Vs.

M/s Lenier Overseas Ltd. ..Respondent

....

Mr. Suresh Kumar, Advocate for Applicant.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 21 AUGUST 2015

P.C.:

This reference under Section 256(1) of the Income Tax Act, 1962 for the Assessment Years 1981-82 to 1984-85 and 1986-87 raises the following question of law for our opinion:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that since in respect of income from interest on long terms and short terms loans to the Indian Company, the method of accounting followed by the assessee company was the cash system and no interest was received during the previous years relevant to those assessment years the interest income was not liable to assessment and could

not be included in the total income of the assessee company?"

2. Mr. Suresh Kumar, the learned Counsel for the revenue states that the tax effect in the present reference for A.Y. 1981-82 is Rs.1,80,540/-, A.Y. 1982-83 is Rs.1,55,568/-, A.Y. 1983-84 is Rs.1,39,056/-, A.Y. 1984-85 is Rs.1,45,819/- and A.Y. 1986-87 is Rs.97,452 aggregating to Rs.7,18,435/-.

3. On 24 July 2015, we had in an order passed in Income Tax Reference No. 430/1997 (Commissioner of Income Tax Vs. M/s Computer Point (I) Ltd.), while returning the reference unanswered made the following observations:

> "Therefore, in view of the Instruction No.5 dated 10 July 2014 read with decision of this Court in **Commissioner of Income Tax Vs. Madhukar Inamdar (HUF)** – 318 ITR 149; **Commissioner of Income Tax Vs. Pithwa Engineering Works** – 276 ITR 598 and **Commissioner of Income Tax Vs. Vijaya Kawekar** - 350 ITR 237 (dealing with earlier Circulars/Instructions) the instructions of 2014 issued by CBDT would also be applicable to pending appeals and references.

5. In fact this Court in Madhukar Inamdar (HUF) has while dealing with Circular dated 15 May 2008 observed as under:

"8. This Court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, filing of cases at the instance of the Revenue has increased; consequently, the burden on the department has also increased to a tremendous extent. The corridors of superior courts are choked with huge pendency of cases. ….. In this view the Board has rightly taken a decision not to file appeals, if the tax effect is less than Rs.4 lakhs so as to reduce the burden of the Department as well as of the Tribunals and Courts. The same policy for old matters needs to be adopted by the department, so as to achieve the object of the policy laid down by the Central Board of Direct Taxes."

6. Nothing has been shown to us to indicate that the issue raised in this particular reference would fall within the exclusion clause of the 2014 Circular nor that the issue has a cascading effect or would otherwise be covered by the Apex Court decision in Commissioner of Income Tax Vs. Surya Herbal Ltd. - 350 ITR 300. In view of the above, we return the reference unanswered."

4. The above observations are apposite to the present facts. Thus the present reference which has tax effect aggregating to Rs. 7,18,435/- is being returned unanswered as having low tax effect.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**