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

INCOME TAX APPEAL NO. 674 OF 2013

Commissioner of Income Tax-5 ..Appellant

Vs.

M/s India Securities Ltd. ..Respondent

....

Ms. S.V. Bharucha, Advocate for Appellant.
None for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 09 MARCH 2015

P.C.:

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 10 October 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order relates to the Assessment Year 2005-06.

2. The appellant-revenue has raised following questions of law for our consideration:

> *"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in upholding the order of the CIT(A) in deleting the disallwance of depreciation amounting to Rs.7,99,343/- being depreciation provided on non performing assets?*

> *(b) Whether on the facts and in the circumstances of the case and in law the Tribunal was right in upholding the decision of the CIT(A) on the issue of set off of profit on sale of depreciable assets of Rs.1.13 crores against long term capital gain which arose to the assessee on indexation method and also allowing brought forward long term capital gain against the said profit on sale of depreciable assets by ignoring the provision of section of 70(3) read with section 50 of the IT Act which clearly states that profits are short term capital gain and also if loss is due to indexation method than such loss can be set off against the income if any as arrived at under similar computation made?"*

<u>Question (a):</u>

3. So far as the issue regarding depreciation on non-performing assets is concerned, the impugned order has followed its own decision in the respondent-assessee's case for the Assessment Year 2001-02, 2002-03, 2003-04, 2004-05 and 2006-07. In all these years the Tribunal has allowed the depreciation in respect of non-performing assets i.e. not linked to the recognizing of lease income in respect of the leased assets. The revenue does not point out any reasons as to why the order of the Tribunal for earlier years should not be followed in this Assessment Year. No other greviance on the above issue in the impugned order is

ventilated by the appellant. Thus no substantial question of law arises. Accordingly Question (a) is dismissed.

Question (b)

4. The impugned order has dismissed the revenue's appeal holding that the respondent-assessee is entitled to set off its profit on sale of depreciable asset against long term capital losses on sale of investment. The revenue contends that in terms of Section 50 of the Act the profit on sale of depreciable assets shall be deemed to be short term capital gains. Therefore, it is submitted by the revenue that under Section 70(3) of the Act, the respondent-assessee is not entitled to set off its short term capital gains against its long term capital loss.

5. The impugned order followed its decision in ***Manali Investment Vs. ACIT*** reported in ***211 139 TTJ (Mum) 411*** on an identical issue. In Manali Investments (supra) followed the decision of this Court in ***CIT Vs. Ace Builders (P) Ltd.*** reported in ***281 ITR 210***. Ms. Bharucha, learned Counsel for revenue fairly points out that the revenue's appeal against the order of the Tribunal in the case of Manali Investment (supra) being Income Tax Appeal No. 1658/2012 was dismissed by this Court by order dated 13 March 2013. This Court in Manali Investment (supra) has held that the principle of law laid down

by this Court in Ace Builders (P) Ltd. (supra) is applicable. The impugned order has merely followed the Tribunal's decision in Manali Investment which has been confirmed by this Court in dismissing the revenue's appeal. Thus no substantial question of law arising for our consideration.

6. Accordingly appeal dismissed. No order as to costs.

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