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

NOTICE OF MOTION NO. 1110 OF 2009
IN
INCOME TAX APPEAL NO. 1466 OF 2007

The Commissioner of Income Tax-4,
Mumbai ..Applicant

Vs.

M/s Orbit Exports Ltd. ..Respondent

....

Mr. Suresh Kumar a/w Shyam Walve, Advocates for Applicant.
Mr. Ashok Patil, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 12th JUNE 2015

P.C.:

This Notice of Motion is taken out by revenue to recall the order dated 13 August 2008 passed by this Court dismissing the revenue's appeal in default.

2. For the reasons stated in affidavit in support, the order dated 13 August 2008 is recalled and the motion is made absolute in terms of prayer clause 'A'.

3. At the request of the Counsel, the appeal itself is taken up for admission.

4. The question of law framed by revenue for our consideration reads as under:

> "Whether on the facts and circumstances of the case and in law the Tribunal erred in treating the lease rent of Rs.46,10,731/- as revenue expenditure disregarding the fact that it was capitalized in the book of accounts and the Assessee?"

5. It is agreed position between the Counsel that the proposed question of law stands answered by the decision of this Court in Income Tax Appeal No. 537/2007 rendered on 19 March 2012 in the respondent-assessee's own case. The order dated 19 March 2012 raising an identical question was dismissed as not giving rise to any substantial question of law. Ergo in this appeal also no substantial question of law arises.

6. Accordingly the present appeal is dismissed. No order as to costs.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**