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

INCOME TAX APPEAL NO. 1024 OF 2013

Commissioner of Income Tax-9	**}**	**Appellant**
versus		
M/s. Asgard Properties Pvt. Ltd.	**}**	**Respondent**

Mr. Arvind Pinto for the Appellant.

Ms. Aarti Vissanji with Mr. S. J. Mehta for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATED :- MARCH 30, 2015

P.C. :-

The Revenue is in Appeal against the order of the Income Tax Appellate Tribunal dated 23rd November, 2012 in Income Tax Appeal No. 3493/Mum/2011. The Assessment year is 2005-06.

2) Mr. Pinto appearing for the Revenue submits that this Appeal raises substantial questions of law and which are proposed by the Revenue at page 8 of the paper book. He would submit that the flat which was agreed to be sold was not sold and conveyed till the payment of stamp duty as well as registration charges and execution of final agreement which was registered on 19th March, 1999. Even the physical possession was not given until 14th February, 1999. Therefore,

the date of indexation must be reckoned as the date on which the final agreement was registered and not the date on which the flat was promised to be handed over to the Assessee. That date 24th February, 1994 cannot, therefore, be taken as the date of indexation.

3) We are unable to agree with Mr. Pinto. There is no dispute about the facts. The Tribunal found that the flat was agreed to be sold to the present Assessee in the year 1994 and a letter in that behalf was addressed and handed over. The formalities of transfer and handing over of physical possession were postponed to the date of final payment. That was because the agreed price of Rs.94,40,000/- was not paid in one go or at the time of the allotment letter. A substantial payment was made between 1994-95. Once the last payment alone and which was in the sum of Rs.9 lacs and odd was made that the document was executed, registered and possession was handed over. Therefore, in the given facts, the Tribunal found that when major payments have been made up to the financial year 1994-95 and only a small sum remained to be paid, which was paid later on, then, the date of indexation should be 24th February, 1994 and not what the Revenue determined in this case. That the Assessee later on sold his flat and that transaction resulted in a loss that while working out that loss this indexation from 1994 was claimed. That was denied and on the above

ground but which the Commissioner and the Tribunal have not found to be tenable.

4) We also think that no larger question of law, much less substantial, arises as the Tribunal has endorsed the view taken by the Commissioner of Income Tax (Appeals) which was imminently possible and given the factual background. In such circumstances, there is no perversity in the Tribunal's finding and conclusion, which is in any event based on its earlier orders under the similar circumstances. In the result, the Appeal does not raise any substantial question of law. It is accordingly dismissed. No costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**