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

INCOME TAX APPEAL NO.485 OF 2011

The Commissioner of Income Tax-19. ...Appellant
Vs.
M/s.Jolly Apartments CHS Ltd. ...Respondent

....

Mr.Abhay Ahuja, Advocate for Appellant.

Ms.Aasifa Khan, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.

DATED : 26 OCTOBER 2015

P.C.:

1. This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 16 December 2009 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Assessment Year 2002-03.

2. This appeal was admitted on 6 November 2012 on the following substantial questions of law:-

> “a) Whether on the facts and in the circumstances of the case and in law ITAT was right in ignoring the fact that the appellant society is the legal and beneficial owner

of the land and hence, therefore, the right to construct additional built up area on the land belonged to the appellant society and not with its members ?

b) Whether on the facts and in the circumstances of the case and in law, the ITAT was right in ignoring the fact that Transfer of Development Right (TDR) value is embedded in the cost of land; as such the cost of the said TDR is ascertainable, unlike goodwill of the first year of business, which was the issue in the case of "CIT V. B.C.Shrinivasan Shetty" relied by the Tribunal ?"

3. It is agreed between the parties that the issues arising herein stand concluded in favour of the respondent-assessee and against the revenue by the decisions of this Court in Income Tax Appeal No.1356 of 2012 (CIT Vs. Sambhaji Nagar Co-op.Hsg.Society Ltd.) decided on 11 December 2014 and Income Tax Appeal No.2346 of 2009 (CIT Vs. M/s.Maheshwar Prakash 2 CHS Ltd.) decided on 24 April 2015. The impugned order of the Tribunal has in fact followed its decision in the case of "M/s.Maheshwar Prakash 2 CHS Ltd." and the appeal of the Revenue against the order of the Tribunal was not entertained by the order dated 24 April 2015. Accordingly, question (b) is

answered in the affirmative that is in favour of respondent-assessee and against the Revenue.

4. So far as question (a) is concerned, we find that the Assessing Officer as well as CIT (Appeals) held the respondent-assessee to be a legal and beneficial owner of the land and hence sought to tax the consideration received on sale of TDR in the hands of the Society. It was the respondent-assessee which was aggrieved by the same and had contended before the Tribunal that the sale consideration of TDR was received by the individual member of the Society. The impugned order of the Tribunal does not disturb the finding of the CIT (Appeals) that it is the society alone which is to be taxed.

5. In any event, question (a) need not be answered, as in view of our answer to question (b), the issue become academic.

6. Accordingly, appeal disposed of in the above terms. No order as to costs.

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