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

INCOME TAX APPEAL NO. 1862 OF 2013

The Commissioner of Income Tax-3 ..Appellant

Vs.

M/s Kotak Commodity Services Ltd. ..Respondent

WITH
INCOME TAX APPEAL NO. 1863 OF 2013

The Commissioner of Income Tax-3 ..Appellant

Vs.

M/s Kotak Mahindra Bank Ltd. ..Respondent

....

Mr. Ashok Kotangale, Senior Advocate a/w Arun D. Nagarjun, Advocate i/b Padma Divakar for Appellant.
Mr. A.K. Jasani, Advocate for Respondent Nos. 10 & 11.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 16 SEPTEMBER 2015

P.C.:

Both these appeals under Section 260A of the Income Tax Act, 1961 (the 'Act') have been filed by the revenue against the common impugned order dated 16 January 2013 of the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order allowed the respondent-assessee's appeals for the Assessment Year 2006-07 in respect of both the respondent-assessee.

2. The questions of law as proposed for our consideration by the revenue reads as under:

> “(A) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in law in holding that Fringe Benefits cannot arise when the expenditure is incurred on non-employees without appreciating that the deeming provisions of Section 115WB(2) are not subject to the provisions of Section 115JB(1) of the Income Tax Act but enlarge the scope of sub-section 115JB(1)?
>
> (B) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in law in holding that expenses which are specifically mentioned in Section 115WB(2) can be reduced from the valuation of fringe benefit if they have not been incurred for employees without appreciating that the CBDT Circular No.8 of 2005 categorically states that sub section (2) is an extension of sub-section (1) of section 115JB of the Act?”

3. The learned Counsel for the parties jointly state that identical appeals filed by the revenue from the common impugned order in respect of other parties to this Court being Income Tax Appeal Nos. 1818/2013, 1829/2013 and 1831/2013 were dismissed yesterday i.e. 15 September 2015. This was by following the decision rendered of this Court in CIT Vs. Kotak Mahindra Old Mutual Life Insurance Ltd. being Income Tax Appeal No. 674/2012 decided on 22 August 2014. In fact, the impugned order follows the decision of the Tribunal rendered in Kotak Mahindra Old Mutula Life Insurance Ltd. (supra).

4. For the reasons indicated in our order passed on 15 September 2015 in Income Tax Appeal Nos. 1818/2013, 1829/2013 and 1831/2013, we see no reason to interfere with the impugned order.

5. Accordingly, appeals dismissed. No order as to costs.

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

<u>CERTIFICATE</u>

Certified to be true and correct copy of the original signed Order.