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

**INCOME TAX APPEAL NO.1444 OF 2011**

The Commissioner of Income Tax-19. ...Appellant
Vs.
Auro Villa CHS Ltd. ...Respondent

....

Mr.Suresh Kumar, Advocate for Appellant-Revenue.

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 31 March 2010 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Assessment Year 2004-05.

2. This appeal was admitted on 29 January 2013 on the following substantial questions of law:-

> “a) Whether on the facts and circumstances of the case and in law the Tribunal was correct in holding that receipt arising on assignment of TDR are not taxable in the hands of the assessee society without appreciating the

fact the appellant society is the legal and beneficial owner of the land and the FSI is available to the society and 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 circumstances of the case and in law, the Tribunal was right in holding that there is no cost of acquisition of TDR and thereby not subjecting the receipt of Rs.10,41,00,000 to capital gain tax ?"

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

6. Accordingly, the appeal is disposed of.

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