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

INCOME TAX APPEAL NO. 1852 OF 2014

Commissioner of Income Tax-21 .. Appellant

v/s.

M/s. Sai Shiv Developers ..Respondent

Mr. Ashok Kotangale i/b Ms. Padma Divakar for the appellant
Mr. Subhash S. Shetty a/w D.C. Jain for the respondent

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

DATED : 14th DECEMBER, 2015.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order of the Tribunal relates to Assessment Year 2006-07.

2. This appeal raises the following substantial questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue and holding the same to be infructuous, without considering the fact that the Revenue has not accepted the Tribunal's order dated 23.05.2012 setting aside the order u/s 263 and has filed an appeal u/s 260A for A.Y. 2006-07 vide ITXA No.211/2013 which is pending and hence not reached finality?

(ii) *Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue and holding the same to be infructuous without discussing the issue of deemed dividend?"*

3. It is an agreed position between the parties that both the questions stand concluded against the Revenue by the decision of this Court, rendered on 27th January, 2015 in Income Tax Appeal No.210 of 2013 filed by the Revenue against the same Respondent Assessee. The above Income Tax Appeal No.210 of 2013 was filed from the order dated 23rd May, 2012 of the Tribunal for Assessment Year 2005-06 holding that Commissioner of Income Tax has no jurisdiction to exercise powers of Revision under

Section 263 of the Act and also that on merits no issue of deemed dividend arises. The present appeal emanates for the orders passed in appeal by the Commissioner of Income Tax (Appeals) on merits.

4. Consequently, the questions as framed above do not give rise to any substantial question of law. Thus, not entertained.

5. Hence, the Appeal is dismissed. No order as to costs.

(G.S. KULKARNI, J.) **(M.S. SANKLECHA, J.)**