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

INCOME TAX APPEAL NO. 147 OF 2013

The Commissioner of Income Tax-19	}	**Appellant**
versus		
Mrs. Jyotika Premnarayan	}	**Respondent**

Ms. S. V. Bharucha for the Appellant.

Mr. Pankaj Toprani with Ms. M. S. Krupa Toprani for the Respondent.

CORAM :- S.C.DHARMADHIKARI &
S.P.DESHMUKH, JJ.
DATED :- JANUARY 9, 2015

P.C. :-

The Tribunal has dismissed the Revenue's Appeal being Income Tax Appeal No. 7640/Mum/2010. That is why the Revenue has preferred this Appeal to this Court.

2) The assessment year is 2003-04. The transaction has been referred in full details in the Tribunal's order. The present Assessee before us was a co-owner of the immovable property along with Kailash Premnarayan. The transaction with Godrej Properties and Investments Limited resulted in the exercise undertaken by the Assessing Officer. The transaction was throughout termed, by the Assessee, as taxable under the head 'capital gains'. The co-owner Kailash Premnarayan also adopted this stand.

3) In the case of Kilash Premnarayan, the Tribunal took the view favouring Kailash and held that the transaction in question is taxable under the head 'capital gains'. That finding of fact in Kailash's case was questioned by the Revenue by filing Income Tax Appeal No.4607 of 2010. A Division Bench of this Court on 28th September, 2011 dismissed the Revenue's Appeal.

4) The order passed in Kailash Premnarayan's case has been followed and applied in the other co-owners, namely the present Assessee's case. The transaction being similar, the factual finding being identical, we are of the view that the Division Bench order in Kailash Premnarayan's case would bind the Revenue. For these reasons, we do not find that the Appeal raises any substantial question of law. It is accordingly dismissed. No costs.

(S.P.DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**