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

INCOME TAX APPEAL NO. 252 OF 2013

Commissioner of Income Tax-16	**}**	**Appellant**
versus		
New Gulistan Co-op. Hsg. Soc. Ltd.	**}**	**Respondent**

Mr. A. R. Malhotra with Mr. N. A. Kazi for the Appellant.

Mr. Nishit Gandhi i/b. Mr. Vipul Joshi for the Respondent.

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

P.C. :-

This Appeal challenges the order passed by the Income Tax Appellate Tribunal dated 31st July, 2012. The Assessment year is 2008-09.

2) The Tribunal's Mumbai Bench disposed of Income Tax Appeal No. 6103/M/2011 filed by the Revenue, upholding the order of the Commissioner dated 26th May, 2011.

3) The issue raised in the Appeal was deletion of addition of amount of transfer charges amounting to Rs.54,67,500/-. The Assessee urged before the Tribunal that the Revenue cannot raise this issue again

and again. Similar addition was made by the Assessing Officer in the assessment year 2006-07 and that was deleted by the first Appellate Authority. When the matter came before the Tribunal, the view taken by the Commissioner was confirmed. A copy of that order passed by the Tribunal on 7th March, 2012 in the case of this very Assessee in Income Tax Appeal No. 3516/M/2011 was placed on record of the Tribunal. Both sides conceded that the facts and circumstances for the assessment year in question, namely 2008-09 are identical to those emerging from the order passed in the case of this very Assessee, for the assessment year 2006-07.

4) Mr. Malhotra appearing for the Revenue would submit that the present Appeal is competent and maintainable. He would submit that the Appeal raises substantial questions of law, inasmuch as the addition was made by the Assessing Officer because the Respondent/Assessee Co-operative Housing Society received the sum of Rs.54,67,500/- as transfer charges. Those were not admissible and in terms of a Circular of the Government of Maharashtra, Department of Co-operation, the Transfer fees are capped and there is an outer limit of Rs. 25,000/- thereon. Any sum beyond this quantum cannot be received and accounted as transfer fees.

5) We are unable to agree with Mr. Malhotra because if the addition is on account of transfer charges and repeatedly the Revenue is raising the issue of addition but unsuccessfully and equally in this Court, then, the concession which the Departmental Representative gave before the Tribunal binds the Revenue. It binds because the order passed by the Tribunal in the case of the very Assessee for prior assessment year was in identical facts and in identical circumstances. Neither the facts nor the circumstances have undergone any change in the successive assessment years. It is unfortunate that the Revenue files Appeals despite this admitted position. In such circumstances and when the order passed by this Court on 28th March, 2011 in Income Tax Appeal (L) No. 1905 of 2010 dealing with identical controversy for the assessment year 2005-06 is placed on record by Mr. Gandhi, then, all the more we cannot entertain this Appeal. It is dismissed, as no substantial question of law arises from the order passed by the Tribunal in this case. No costs.

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