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

INCOME TAX APPEAL NO.1028 OF 2013

Honrao Nitin Bhimashankar ..Appellant
-***Versus***-
Income Tax Officer, Ward(3)Solapur ..Respondent

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Mr. A. V. Anturkar, Senior Counsel, a/w Mr. Prathamesh Bhargude i/b. Sugandh B. Deshmukh for the Appellant.
Mr. Tejveer Singh for the Respondent.

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CORAM: S. C. DHARMADHIKARI AND
A. K. MENON,JJ.

DATE :- 31st MARCH, 2015.

P.C.:

This Appeal is by the Assessee. It is directed against the order dated 19th July, 2012 of the Income Tax Appellate Tribunal, Bench at Pune. The Assessee preferred the Appeal before the Tribunal and in relation to assessment year 2005-06. The Assessee challenged the order of the Commissioner of Income Tax (Appeals)-III, Pune, dated 17th September, 2009. The Assessee raised two grounds. The ground no.1 pertains to the addition of Rs.21,54,611/- under section 40A(3) of the Income Tax Act and ground no.2 pertains to addition of Rs.1,04,628/- under section 69B of the Income Tax Act. On both counts, the Assessee succeeded. The Assessee's Appeal was allowed. The Tribunal has held that there is substance in the contentions of the Assessee's representative and, therefore, the order of the Commissioner was set aside. The matter was restored to the file of the Assessing Officer for fresh adjudication. On both grounds, this is the approach of the Tribunal.

2] It is not the argument before us that the Tribunal itself should have allowed the entire Appeal and the order of restoration or remand to the Assessing Officer, was uncalled for. The argument is that during the course of consideration of the grounds, the Tribunal erroneously recorded one concession on interpretation of Rule 6DD of the Rules 1962. That concession was given by the Assessee's Advocate and the Tribunal has relied upon the same. That is a substantial question of law.

3] After hearing Mr. Anturkar, the learned Senior Counsel, appearing for the Assessee in support of this Appeal, we are unable to agree. All that the Tribunal has done, is to accept the grounds raised by the Assessee in the Appeal and the argument in support thereof. That enabled the Tribunal to set aside the concurrent orders one of the Assessing Officer and secondly of the First Appellate Authority. However, for closer scrutiny and verification of the claims, from which these grounds arise that the Tribunal thought it fit to restore the matter to the file of the Assessing

Officer for a fresh consideration and in accordance with law. The Tribunal has powers to do so and that is not in dispute. We do not see how the Assessing Officer would be bound by any observation and finding and which according to the learned Senior Counsel is based on the concession of the advocate for the Assessee and erroneously given. When the matter is before the Assessing Officer, he will scrutinize it in accordance with law. If it is a question of law no amount of concession can bind the Assessing Officer and he will have to read the provision and place his interpretation on the same. In such circumstances, the apprehension of the Senior Counsel is totally unfounded. Based on that, we cannot entertain this Appeal. The Appeal raises no substantial question of law. It is, accordingly, dismissed. No costs.

(A. K. MENON,J.) **(S. C. DHARMADHIKARI, J.)**

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