IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL No. 1 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

INCOME TAX APPEAL No. 2 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

INCOME TAX APPEAL No. 3 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

INCOME TAX APPEAL No. 4 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

INCOME TAX APPEAL No. 5 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

INCOME TAX APPEAL No. 6 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

INCOME TAX APPEAL No. 7 OF 2015
Ashok Anandrao Dhapodkar, Nagpur. -Vrs.- The Assistant Commissioner of Income Tax Central Circle 2(1) (Nagpur).

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. N.S. Bhattad, counsel for appellant.
Mr. Anand Parchure, counsel for respondent.

CORAM : B.P. DHARMADHIKARI AND P.N. DESHMUKH, JJ.

DATED : 13th OCTOBER, 2015

This Court heard respective parties initially on 7.9.2015 and thereafter on 14.9.2015. Today we have heard Advocate Bhattad for appellant - assessee and Advocate Parchure for respondent department.

Question sought to be raised by advocate Bhattad on behalf of appellant -assessee is whether nature of receipts as earnest money paid to assessee by customers will undergo any change merely because books of accounts are not maintained ? He submits that perusal of impugned order shows that the sale deeds are not registered, projects are still incomplete and possession is not handed over by assessee to any of the customers. The transaction, therefore, itself is incomplete and hence as per the settled law earnest money needs to be treated as capital income. He relies upon judgment of Hon'ble Apex Court reported in **2000(243) ITR page 158** (Travancore Rubber and Tea Co. Ltd., Vrs. Commissioner of Income Tax. He urges that the Hon'ble Apex Court held therein that forfeiture of earnest money does not make any change in its nature.

Advocate Parchure, on the other hand, invites attention to provisions of section 56(2)(ix) to urge that the said advances need to be treated as income from other source and have been rightly accordingly so treated. He further invited attention to observation in assessment order to show that on 25.10.2004 a Return declaring total income of Rs.1,48,410/- and agricultural income as nil was filed and it was processed on 7.3.2005. Assessee then paid tax of Rs. 4,682/-. Thereafter search and seizure action was taken on 27.5.2008 and consequently after notice under section 153A assessee has filed Return of income on 18.11.2010 declaring total income of Rs.1,48,410/- and has paid tax of Rs. 5,000/-. He highlights the fact that advances received by assessee from various customers were not recorded in any books of account and assessee could not produce any material though several opportunities were given to him by Assessing Officer. He contends that as advances were not recorded in books of account and it is admitted position that books of account are not at all maintained by assessee, the modification in assessment order by CIT(A) bringing down tax liability of assessee as upheld by ITAT does not call for any interference.

After hearing respective counsel we find that though assessee has received advances from customers and is in business, he has not maintained books of account. His contention that transactions were not complete and therefore not maintaining books of account will not make any change is self serving argument. He is a developer doing business and incurring expenditure. In so far as receipt of earnest money is concerned, it could have been examined in the light of treatment extended by assessee in books of accounts. The assessee filed Return before search and seizure action and thereafter on 18.11.2010. There is no explanation as to why books of account have not been maintained by him.

In absence of books of accounts, the department has after considering facts in totality reached a particular finding. We are not in a position to accept oral assertion of assessee that the deposit received by him ought to have been treated as capital income and not as income from other source.

Though provisions of Section 56(2)(ix) are amended with effect from 1.4.2015, going by arguments advanced by assessee, if the amount is accounted for after transaction is complete on mercantile basis, the said provision may be applicable. However, this issue has not been gone into by ITAT and therefore we are not recording any binding opinion and finding on the question.

As we find no substantial question of law arising in these appeals, the appeals are dismissed. No costs.

JUDGE **JUDGE**

Hirekhan