FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

INCOME TAX REFERENCE (itr) Nos. 287 OF 1995

The Commissioner of Income Tax

v.

M/s Chandrashekhar Roller & Flour Mills Ltd.

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

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Coram : B.P .Dharmadhikari and V.M.Deshpande, JJ.

Date : 10th DECEMBER, 2015

Heard Advocate Bhattad for the Income Tax Department. Nobody appears for the respondent-assessee. Following question has been referred to this Court under Section 256(1) of Income Tax Act:

> "Whether the facts and in the circumstances of the case, the ITAT was justified in allowing the claim of depreciation on the portion of the Flour Mill Building treating it as 'Plant'?"

We have perused the assessment order. Assessment order takes note of the fact that after removing equipments of the plant, the building can still exist and put to beneficial use. The Hon'ble Apex Court in **(2000) 5 SCC 393 – CIT. Trivandrum vs. Anand Theatres** considered similar controversy. The different phraseology used, namely "building", "plant" and "machinery" have been construed and the Hon'ble Apex Court has found that a building cannot normally be construed as a plant. The Hon'ble Apex Court has given illustration of a dry dock where ship can be constructed and then can be allowed to float in sea/river by flooding it. The test, therefore, appears to be of functional integrity. This judgment delivered by the Hon'ble Apex Court is under Income Tax Act, 1961 itself and for the Assessment Year 1986-87 only, i.e. the year with which we are concerned. The other two Assessment Years are 1987-1988 and 1988-1989. Facts on record show that building structure in the present matter was only for housing various equipments and machineries. As such, we find that the claim to recognize building as a plant is misconceived. We, therefore, uphold the orders of Assessing Officer and ITAT. Reference is answered in favour of revenue and against the assessee.

Proceedings disposed of.

JUDGE **JUDGE**

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