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

INCOME TAX APPEAL NO.282 OF 2014
AND
INTEREST TAX APPEAL NO.3 OF 2014

The Commissioner of Income Tax-3, Mumbai ... Appellant
Versus
SICOM Ltd. ... Respondent

.....

Mr. Ashok Kotangle for the Appellant.
Mr. Nishant Thakhar a/w Ms. Jasmin Amalsadwala i/b PDS Legal for the Respondent.

.....

CORAM : M.S. SANKLECHA &
S.C.GUPTE, JJ

DATE : 14 SEPTEMBER 2016

<u>P.C.</u> :

. Income Tax Appeal No.282 of 2014 is not on board. Upon mentioning taken on board for consideration alongwith Interest Tax appeal No.3 of 2014 for admission. Both these appeals are filed under Section 260A of the Income Tax Act (Act) and are being heard together as they arise on the same facts for Assessment Year 1998-99.

2 **Re : Income Tax Appeal No.282 of 2014**.

(a) This appeal challenges an order dated 22 May 2013 passed by The Income Tax Appellate Tribunal ("Tribunal"). The impugned order is a common order passed for various Assessment Years including Assessment Year 1997-98. The present appeal relates to Assessment Year 1998-99.

(b) Mr. Ashok Kotangle, learned Counsel for the Appellant urges only following two question of law for our consideration :

> "(A) Whether the ITAT was justified in law in confirming the decision of Ld. CIT(A) in deleting the disallowance of depreciation in respect of underlying assets, without appreciting that the lease transactions were transactions of finance/loan only ?"
>
> (D) Whether on the facts and circumstances of the case and in law, the ITAT was justified in setting aside the issue of depreciation claimed in respect of assets involved in sale & lease back transactions entered during the year, to the file of the AO by relying on the decision of the Delhi High Court in the case of Cosmo Films Ltd. (2011) 338 ITR 266 (Delhi), without appreciating that the finding of this case is clearly distinguishable from that of Cosmos Films Ltd. where a sum was retained by the lessor for the security of the leased equipments, whereas in the present case, some of the assets were retained in the name of lessor for securing the financed amount ?"

(c) Mr. Kotangle, learned Counsel for the Appellant very fairly states that both these questions were the subject matter for consideration by this Court in Revenue's Income Tax Appeal No.498 of 2014, filed against another impugned order dated 22 May 2013 in so far as it related to the Assessment Year 1997-98. The issues arising herein in the aforesaid two questions are identical to those raised by the Revenue in its Income Tax Appeal No.498 of 2014. This Court by order dated 8 August 2016, refused to entertain the Revenue's Appeal on the aforesaid two questions raised in Income Tax Appeal No.498 of 2014, as they do not raise any substantial question of law.

(d) Accordingly, the two questions raised herein for the reasons indicated in our order dated 8 April 2016 in Income Tax Appeal No.498 of 2014 do not give rise to any substantial question of law. Thus not entertained.

(e) Hence, appeal is dismissed. No order as to costs.

3 **Re : Interest Tax Appeal No.3 of 2014**.

(a) This appeal challenges an order dated 26 June 2013 passed by the Tribunal for the Assessment Year 1998-99. The impugned order dated 26 June 2013 is a common order *inter alia* in respect of the appeal for the Assessment Year 1997-98 and 1998-99, under the Interest Tax Act, 1974.

(b) The Revenue urges the following question of law for our consideration.

> “Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in setting side the issue to the file of Assessing Officer for fresh adjudication, without appreciating that the lease transactions were transactions of finance/loan only, and as such the finance component of the lease rentals were interest on loan and advances and taxable as per provisions or the Interest Tax Act, 1974 ?”

(c) Learned Counsel for the Revenue very fairly states that issue arising herein stand concluded against the Appellant-revenue by the order of this Court dated 8 August 2016 passed in Interest Tax Appeal No.4 of 2014. This was an appeal filed by the Revenue from the common impugned order dated 26 June 2013 to the extent it related to the Assessment Year 1997-98.

(d) The impugned order of the Tribunal has restored the entire issue of sale and lease back transactions to the Assessing Officer to determine the character of transactions by following its order dated 22nd May 2013 passed under the Act by the Tribunal for the Assessment Year 1998-99. The appeal of the Revenue from the order dated 22 May 2013 of the Tribunal being the Income Tax Appeal No.282 of 2014 has been dismissed herein above.

(e) In view of the above, it is an agreed position between the parties that the question as framed herein above does not give rise to any substantial question of law. Thus not entertained.

4 Accordingly, both appeals are dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**