IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2532 OF 2015
WITH
INCOME TAX APPEAL NO.2124 OF 2013

S. Vinodkumar Diamonds Pvt.Ltd. … Petitioners/Appellants
v/s
The Additional Commissioner of
Income Tax, Range 5(3) and others … Respondents

Mr J.D. Mistry, Sr. Counsel with Mr Madhur Agarwal and Mr Rajesh Poojari i/b M/s Mint and Conferers for Petitioners / Appellants.

Mr Ashok Kotangale with Ms Padma Divakar for Respondents.

Mr Nirmal Mohanty for Respondent Nos.1 and 2 in WP No.2532 of 2015.

Mrs S.V. Bharucha for Respondent Nos.1 and 2.

CORAM : M.S. SANKLECHA AND
B.P. COLABAWALLA JJ.

DATE : 13th JANUARY, 2016

P.C.:-

1. Income Tax Appeal No.2124 of 2013 filed under section 260A of the Income Tax Act 1961 (Act) challenges the order of the Tribunal dated 3rd May 2013 of the Income Tax Appellate Tribunal (Tribunal) for the AY 2008-09. The Writ Petition No.2532 of 2014 assails the order of the Tribunal dated 4th March 2015 rejecting the Petitioners' Miscellaneous Application seeking to rectify / modify the

order dated 3rd May 2013 which is under Appeal before us.

2. We first take up Income Tax Appeal No.2124 of 2013 for consideration. After hearing the parties, we find that the following substantial questions of law arise for consideration :-

> "(A) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in confirming that disallowance of Rs.13,52,741/- under section 36(1)(iii) of the Act ?
>
> (B) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the appellant has not proved that interest-free funds were used to give the advance for acquisition of office premises ?
>
> (C) Whether, on the facts and in the circumstances of the case and in law, the Tribunal erred in not deciding the question of whether the loss of Rs.4.02 crores is a notional loss or not ?
>
> (D) Whether, on the facts and in the circumstances of the case and in law, the Tribunal exceeded its jurisdiction in holding that the loss of Rs.4.02 crores is a speculation loss under section 43(5) of the Act ?
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> (E) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the forward contracts entered into by the Appellant are not hedging transaction but speculative transaction ?
>
> (F) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding

that only transaction for the commodity in which the Appellant is dealing would be a hedging transacti9on under the proviso (a) to section 43(5) of the Act ?

(G) Whether, on the facts and in the circumstances of the case and in law, the order of the Tribunal is perverse (I) being contradictory to the facts on record and (ii) which has been passed without considering the binding decision of the jurisdictional High Court in the case of Reliance Utilities and Power Ltd. (supra) and the decision of the Hon'ble Supreme Court in the case of Woodward Governor India Pvt.Ltd. (supra) ?”

3. The Registry to serve a copy of this order upon the Income Tax Appellate Tribunal so as to keep the papers and proceedings relating to the present Appeal available to be produced when sought for by this Court.

4. Thereafter, we took up the Writ Petition bearing No.2532 of 2015 for consideration. The challenge in this Petition is the failure of the Tribunal to exercise its jurisdiction under section 254(2) of the Act and rectify its order dated 3rd May 2013 which has, according to Petitioner, incorrectly recorded facts. We note that as the Appeal has also been admitted on question (G) which requires us to consider whether the impugned order in appeal is perverse being contrary to the facts on record as well as the decisions of this Court and the Apex Court, the admission of the aforesaid questions would by itself leave it open to the Appellants / Petitioners to contend that the

impugned order of the Tribunal is contrary to the facts on record as is urged in the Writ Petition. Thus, it will be open to the Appellants to raise all contentions which are raised in the Writ Petition at the time of final hearing of the Appeal. In view of the above observations, Mr Mistry seeks leave to withdraw the Writ Petition. Writ Petition is dismissed as withdrawn.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**