THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MRS JUSTICE ANIS

<u>I.T.T.A.No.168 of 2016</u>

<u>JUDGMENT:</u> **(Per Hon'ble Sri Justice V. Ramasubramanian)**

The Revenue has come up with the above appeal raising the following questions of law –

1. Whether the ITAT was correct in deleting the disallowance by holding that the judgment in Indwell Constructions v. CIT reported in (232 ITR 776) is applicable to the facts and circumstances of the case?
2. Whether on facts and in circumstances fo the case and in law, the Hon'ble ITAT is correct in holding that once the income of the assessee was estimated by rejecting the books of account, the assessing Officer cannot make any disallowance under Section 40(a) (ia) of the I.T.Act, 1961 when the payments are liable to be disallowed and to be added in terms of Section 40(a) (ia) of the I.T. Act, 1961?
3. Whether on facts and in circumstances of the case and in law, the Hon'ble ITAT is correct in deleting the disallowance made under Section 40(a) (ia) of the I.T.Act, by following the decision of the Hon'ble High Court in the case of Indwell Constructions v. CIT reported in (232 ITR 776) without appreciating the fact that the said decision was rendered before incorporating the provisions of Section 40(a) (ia) of the Act w.e.f. 01.04.2005?

However, it is fairly admitted by Ms. K. Mamata, learned Standing Counsel that the Department's appeal in respect of the Assessment Year 2007-08 as against the same assessee in I.T.T.A.No.430 of 2014 was dismissed by a Division Bench of this Court by order dated 17.07.2014. Therefore following the same, this appeal is also dismissed. No order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE ANIS

18th July, 2016
Js.