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

INCOME TAX APPEAL NO. 558 OF 2014

The Commissioner of Income Tax-8	}	**Appellant**
versus		
M/s. Avin Pumps Pvt. Ltd.	}	**Respondent**

Arvind Pinto for the appellant.

None for the respondents.

CORAM :- S. C. DHARMADHIKARI & PRAKASH. D. NAIK, JJ.

DATED :- MARCH 27, 2017

P.C. :-

1. Having heard Mr. Pinto appearing for the Revenue in support of this appeal and perusing the impugned order, particularly the findings in para 6 thereof, we are of the opinion that the appeal does not raise any substantial question of law. The judgment rendered in the case of *M/s. Artic vs. ACIT (68 ITD 462)* of the tribunal has been referred in the previous paragraph. The tribunal held that the assessee is entitled for deduction under section 50(i)(iii). In the present case, the assessee argued that the office premises were disposed of and residential premises were acquired within the permissible period. The residential premises could have been used by the assessee as office as well. It

is in these circumstances whether the benefit under the provision should be granted or it should be restricted is the matter, which is directed to be examined by the assessing officer. In fact, the appeal of the assessee is allowed only for statistical purpose. The matter has to go back to the assessing officer for examining as to whether the premises is used as office premises and if it is so used, then, he may not be entitled to depreciation unless the asset is used for business purpose. That is how the matter has to be examined and therefore, while working out the capital gains, the tests have been referred to, but whether those are applicable to the facts of the present assessee has to be re-examined by the assessing officer.

2. Once the matter has been sent back to the assessing officer without any relief being granted by the tribunal to the assessee, then, we need not further consider the matter before us. We do not think that such order and direction in the peculiar facts and circumstances of the assessee's case raises any substantial question of law. The appeal is, therefore, dismissed. There would be no order as to costs.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**