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

INCOME TAX APPEAL NO. 926 OF 2014

The Commissioner of Income Tax	}	**Appellant**
versus		
Shri Pinakin L. Shah	}	**Respondent**

Mr. Arvind Pinto for the applicant.

Mr. S. C. Tiwari with Ms. Rutuja Pawar for
the respondent.

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

DATED :- APRIL 27, 2017

P.C. :-

1. After having heard Mr. Pinto at some length and perusing, with his assistance, the order of the tribunal, we find that the tribunal has concluded, on the basis of the argument by the assessee's representative before the first appellate authority and equally before the tribunal, that the documents indicate that the assessee had made payment of Security Transaction Tax (STT). It is in these circumstances that the first appellate authority held that the assessing officer erroneously exercised powers conferred in him by section 154 of the Income Tax Act, 1961. Once the issue was debatable and all the requisite documents were placed,

then, there was no warrant for such an exercise. The finding of the assessing officer that no such tax was paid is not based on any material on record. That the first appellate authority has thus performed its statutory function and by interfering with such an order of the assessing officer. It is concurrently held that the rectification order of the assessing officer is not in accordance with law. Section 154 of the Income Tax Act, 1961 was no attracted. When such is the duty performed by the authorities, then, no substantial question of law arises for determination in this appeal. Hence, the appeal is dismissed. There would be no order as to costs.

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