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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.688 OF 2015 WITH
INCOME TAX APPEAL NO.689 OF 2015

The Principal Commissioner of
Income Tax-28, Navi Mumbai ...Appellant
(in both appeals)
vs.
M/s.Abhishek Enterprises ...Respondent
(in both appeals)

Ms S.V.Bharucha for the appellant
None for the respondent

CORAM : A.S.OKA, &
A.K.MENON,JJ.
DATE : NOVEMBER 7, 2017

P.C.:

1 These two appeals take exception to the common Judgment and order dated 31st October 2014 passed by the Income Tax Appellate Tribunal, A Bench, Mumbai (for short "the Appellate Tribunal") by which these two appeals preferred by the revenue and the cross objections filed by the assessee were dismissed.

2 With a view to appreciate the submissions, a brief reference to the factual controversy will have to be made. The appeals relate to the year 2006-2007. The appeal No.4095/M/11 is quantum appeal preferred by the revenue by which the challenge is to the order passed by the Commissioner of Income Tax (Appeals) holding that the respondent-assessee is entitled to a deduction under section 80-IB (10)

of the Income Tax Act,1961. A cross objection is filed by the assessee raising an issue of denial of exemption under section 80-IB (10) in respect of the interest receipts earned by the respondent-assessee on temporary deposit of the excess funds with the institutions. The appeal No.4468/M/11 is preferred by the revenue arising out of the order passed by the Commissioner of Income Tax (Appeals) setting aside the order of penalty.

3 As far as the appeal No.4095/M/11 is concerned, the learned counsel for the appellant does not dispute that the finding recorded by the Tribunal is consistent with the law laid down by this Court in the case of the Commissioner of Income Tax, Mumbai vs. M/s. Happy Home Enterprises decided by a Division Bench of this Court by a Judgment and Order dated 19th September 2014 in Income Tax Appeal No.201 of 2012 and other connected appeals. Her submission is that a Special Leave Petition has been preferred by the appellant-revenue against the said Judgment and order dated 19th September 2014. As far as this Court is concerned, the decision dated 19th September 2014 is final and binding. The fact that the Special Leave Petition filed by the appellant against the said decision is pending does not give rise to any substantial question of law. The order which is subject matter of challenge in Appeal No.4468/M/11 is a consequential order in the penalty appeal.

4 Therefore, no substantial question of law arises in both the appeals. Accordingly, the appeals are dismissed with no order as to costs.

(A.K.MENON,J.) (A.S.OKA,J.)