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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1512 OF 2014

Commissioner of Income Tax
Central-III ..Appellant
Versus
Jubiliant Enterprises Pvt. Ltd. ..Respondent

....

Mr. Ashok Kotangale i/b. Padma Divakar for the Appellant.
None for the Respondent.

....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 28th FEBRUARY, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. This appeal raises the following questions of law for our consideration :-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the disallowance made under Section 14A read with Rule 8D on the basis of the netting of interest relying upon the decision of*

its Co-ordinate benches in Paresh K. Shah (ITA No.8214/M/2011) and M/s. Trade Apartments Ltd.?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the Commissioner of Income Tax (Appeals) (CIT(A)) directing the Assessing Officer to delete the 12% interest charged by him, on the interest free deposit received by the assessee, to determine the ALV of the rented property ignoring the well settled judicial principle that what is important is the real nature of transactions in the relied on case supra and not the facts?"

3. **<u>Regarding question (i):-</u>**

(a) The impugned order of the Tribunal dismissed the Revenue's appeal holding that the disallowance of interest under Section 14A of the Act should be made with reference to net interest loan. This was by following the decision of its Co-ordinate bench at Mumbai in case of Paresh K. Shah (ITA no.8214/M/2011) and the decision of its Calcutta Bench in Trade Apartments Ltd. (ITA no.1277/Kol/2011). Mr. Kotangale, the learned counsel appearing for the Revenue is unable to point out whether the decision of the Tribunal in Paresh K. Shah (supra) has been challenged in appeal. This in view of absence of any instructions from the officers of the Revenue. In the above view, one has to proceed on the basis that the decision of the Mumbai Bench of the Tribunal in Paresh K. Shah (supra) has been accepted by the Revenue. In any case, no distinguishing features in facts or law has been pointed to us from those in the case of Paresh K. Shah (supra) which would justify the disallowance on the gross interest paid and not on net interest.

(b) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus not entertained.

4. **Regarding question no.(ii):-**

(a) Mr. Kotangale, the learned counsel appearing for the Revenue very fairly states that this issue stands concluded against the Revenue and in favour of the respondent-assessee by the decision of this Court in ***CIT v/s. Tiptop Typography 368 ITR 330.***

(b) In the above view, there is no reason for us to examine the impugned order of the Tribunal. Accordingly, the question as proposed does not give rise to any substantial question of law. Thus not entertained.

5. Accordingly, appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**