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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1534 OF 2014
WITH
INCOME TAX APPEAL NO.86 OF 2015

Commissioner of Income Tax
Central-II ..Appellant
Versus
M/s. Jyemco ..Respondent

....
Mr. Ashok Kotangale i/b. Ms. Padma Divakar for the Appellant.
Mr. Rohan Deshpande i/b. Mihir Naniwadekar for the Respondent.
....

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

DATE : 6th MARCH, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 14th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment Years 2007-08 and 2008-09. Thus the two appeals.

2. The Revenue has urged the following identical questions of law for our consideration in the appeals as under:-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the*

Redevelopment Agreement would not amount to transfer under Section 2(47) of the Act?

(ii) Whether the Tribunal is right in holding the additional FSI/TDR cannot be accessed to tax as there is no cost of acquisition despite the TDS being non monetary compensation inherently linked to the rights in the land?"

3. <u>Regarding question no.(i):-</u>

(a) We specifically asked Mr. Kotangale, the learned counsel appearing for the appellant-Revenue under which of the sub-clauses of Section 2(47) of the Act would the Redevelopment Agreements involved in the two appeals be considered to the transfer under the Act. Mr. Kotangale very fairly states that the subject Redevelopment Agreements would not fall in any of the sub-clauses of Section 2(47) of the Act which defines the word "*transfer*".

(b) Therefore, in view of the above submission, no further examination of the impunged order in the context of the proposed question is called for.

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

4. <u>Regarding question no.(ii):-</u>

(a) It is an agreed position between the parties that the issue raised herein stands concluded against the Revenue and in favour of the respondent-assessee by the decision of this Court in ***CIT v/s. Sambhaji Nagar Co-op. Hsg. Society Ltd. 370 ITR 325*** and also the decision of this Court in ***CIT v/s. Land Breeze Co-operative Housing Society Limited (Income Tax Appeal No.334 of 2013)*** decided on 11th March, 2015.

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

5. Accordingly the appeals are dismissed. No order as to costs.

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

Wadhwa