IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.36 OF 2015

THE COMMISSIONER OF INCOME TAX-7)...APPELLANT

V/s.

M/S.NANDKISHORE FINVEST P. LTD.)...RESPONDENT

Mr.N.C.Mohanty, Advocate for the Appellant.

Ms.Aasifa Khan, Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 29th JUNE 2017

P.C. :

1 Mr.Mohanty, the learned counsel for the appellant submits that the Tribunal committed an error in observing that the tax effect is less than Rs.3 Lakh. Infact, the tax effect involved in the appeal was Rs.18,09,962/-. The learned counsel submits that even otherwise as per Circular dated 10th December 2015 where audit objection has been accepted by the department, then the

appeals are required to be contested on merits irrespective of the monetary limits.

2 According to the learned counsel for the respondent, there is no effect on the tax liability even as per the order of the Assessing Officer. The Tribunal has rightly disposed of the appeal as dismissed, as even at the relevant time, the appeals below Rs.3 Lakh were not to be prosecuted by the department.

3 It appears that the contention of the Revenue about objection has not been considered. Be that as it may. We are not entering into the debate about the effect of tax liability as there are rival contentions. As the objection of the appellant regarding audit was not considered by the Tribunal, we relegate the parties to the Tribunal.

4 In light of the above, the impugned order is set aside. The parties are relegated before the Tribunal. It will be open for the assessee to raise all the grounds with regard to non-

maintainability of the appeal on account of tax liability being less than Rs.20 Lakh as per the Circular No.21 of 2015 dated 10th December 2015, so also it will be open for the Revenue to put forth its stand about maintainability of the appeal. The Tribunal shall consider the said rival contention and decide about the tenability of the appeal vis-a-vis the Circular of the CBDT about not prosecuting the appeals where the tax effect is less. After deciding the said issue, Tribunal may pass further appropriate orders.

5 Appeal is accordingly disposed of in view of the aforesaid observations and directions.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**