**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.160 OF 2015**

**THE COMMISSIONER OF INCOME TAX-II )**
**PUNE )...APPELLANT**

**V/s.**

**M/S.DESAI AND GAIKWAD )...RESPONDENT**

Mr.Tejveer Singh, Advocate for the Appellant.

Mr.Ruturaj H. Gurjar i/b. Mr.Mihir C. Naniwadekar, Advocate for the Respondent.

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

**DATE : 31st JULY 2017**

**P.C. :**

1 The appeal pertains to Assessment Year 2008-2009. Mr.Tejveer Singh, the learned counsel submits that the Tribunal failed to appreciate that the assessee had cash balance available in the nature of investment in mutual funds and under these circumstances, interest bearing loans cannot be considered as

purely for business purpose. Provisions of Rule 8D(2)(ii) are applicable. The Tribunal erred in setting aside the order under Section 263 of the Act and restored the assessment order. It failed to appreciate that the Assessing Officer did not apply his mind and verify as to whether the working given by the assessee was correct as per the provisions of Rule 8D of the Income Tax Rules. The assessee itself had applied Rule 8D and as such, Rule 8D will have to be applied with all its rigours.

2 The learned counsel for the respondent supports the order.

3 The Tribunal has restored the order of the Assessing Officer. It has been observed by the Tribunal that there was no interest expenditure which was available for apportionment in terms of Clause (ii) of sub-rule (2) of Rule 8D of the Rules, as the entire interest expenditure was directly related to earning of taxable income. The interest and loans borrowed were paid out of sale proceeds of land and the balance of the proceeds were

invested in mutual funds which yielded income. This explanation is accepted by the Assessing Officer. The Commissioner on the other hand, has not pointed out as to how the said explanation of the assessee was wrong.

4 The Tribunal on appreciation of facts as arrived at a plausible conclusion.

5 No substantial question of law arises. The appeal is dismissed. No costs.

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