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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.708 OF 2015

The Principal Commissioner of Income Tax, Central – 3. … Appellant

Versus

M/s. Ackruti City Ltd. …Respondent

Mr. Ashok Kotangale, i/b Padma Divakar, for the Appellant.
Mr. Atul Jasani, for the Respondent.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATED: 5TH FEBRUARY 2018.

PC:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 17th October 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 17th October 2014 is in respect of Assessment Year 2009-10.

2 The Revenue urges the following question of law for our consideration:

> *"(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was right in ignoring the finding of CIT(A) that the transactions between assessee company and sister concerns viz., M/s.Pushpak Healthcare Services Pvt. Ltd., M/s. Sheshan Housing and Area Dev Eng. Ltd. and M/s. Vishal Nirman (India) Ltd., are in the nature of loans and advances and hence provisions of Section 2(22)*

(e) of the Income Tax Act, 1961 are applicable?"

3 The impugned order of the Tribunal has restored the issue to the CIT (A) and consider that the Respondent – Assessee's grievance in the context of its claim, before the authorities, that the issue arising herein stands covered in their favour by the order of the Tribunal dated 29th August 2010, in its own case for the Assessment Year 2004-05. We are informed that consequent to the order of the Tribunal the issue is yet awaiting disposal by the CIT(A).

4. We see no reason to interfere with the impugned order of the Tribunal as the issue has been restored to the CIT (A) to examine it in the context of the order dated 29 August 2010 of the Tribunal for the Assessment Year 2004-05 and the facts for the subject Assessment Year.

5. However, we also note that the CIT (A) in his order has also rendered a finding that the amount received as loan / advances would not fall within the exception provided to sub-section (i) to (v) of Section 2(22) (e) of the Act. In the aforesaid circumstances, the above issue would be open for consideration by the CIT (A) on remand, provided, this issue has not been dealt with in the earlier

order passed by the Tribunal for the Assessment Year 2004-05.

6. In view of the above, the question as framed in the context of facts does not give rise to any substantial question of law.

7. Accordingly, **Appeal dismissed.** No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA,J.)**