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

INCOME TAX APPEAL NO.747 OF 2016
WITH
INCOME TAX APPEAL NO.753 OF 2016

The Pr.Commissioner of Income Tax … Appellant

V/s.

M/s Popley Diamond & Gold Plaza Pvt. Ltd. … Respondent

Mr.Ashok Kotangle with Ms.Padma Divakar for the Appellant.
Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 10, 2018.

P.C.:-

1. These appeals arise from common background. For convenience, we may record facts from Income Tax Appeal No. 747 of 2016.

2. The Revenue has challenged the judgment of Income Tax Appellate Tribunal dated 12th August, 2015.

3. Following question is presented for our consideration:

> "Whether on the facts and in the circumstances of the case and in law, the ITAT was correct in cancelling the assessment order u/s. 143(3) r.w.s. 147 of the I.T.Act for the year under consideration holding that notice u/s.148 was bad in law without appreciating the fact that in this case no scrutiny assessment was done u/s.143(3) and that the re-opening of the case by way of issuance of notice u/s 148 of the Act was very much within the purview of law?"

4. Learned counsel for the parties drew our attention to the order dated 4th December, 2018 in Income Tax Appeal No.666 of 2016 in which concerning this very assessee a similar issue was considered by this Court, the Revenue's appeal was dismissed. We notice that the judgment of Income Tax Appellate Tribunal was common covering the present assessment year also. Following observations may be noted:

> "4. Learned counsel for the Revenue may be correct in pointing out that in the present case the Tribunal ought not to have invalidated the re-assessment on the ground of no failure of disclosure or that no new material was available with the Assessing Officer since the assessment was framed under Section 143(1) of the Income Tax Act, 1961 ("the Tribunal" for short).
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> 5. However, as noted the particular claim

> which the Assessing Officer wants to revisit through the re-assessment proceedings, is not a new one. It was started by the assessee for the first time in the Assessment Year 2000-2001 and was accepted by the Department. Without there being any other change, such issue could not have been re-issued in the present assessment year, particularly when the claim was also accepted after scrutiny in the Assessment Year 2001-2002.
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> 6. In the circumstances, it can be seen that the reason for re-opening the assessment lacks validity or in other words, the Assessing Officer did not have reason to believe that income chargeable tax had escaped assessment.
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> 7. In the result, Tax Appeal is dismissed."

In the result, without recording independent reasons, these tax appeals also dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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