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

INCOME TAX APPEAL NO. 786 OF 2002

The Commissioner of Income Tax,
Mumbai City IV, Mumbai .. Appellant

v/s.

M/s. Lokhandwala Estate & Development
Company Ltd. ..Respondent

Mr. Arvind Pinto for the appellant
Dr. K. Shivram, Senior Counsel a/w Mr. Rahul Hakani for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 9th JULY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 27th May, 2002 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 1991-92.

2. On 14th September, 2004, this appeal was admitted on the following substantial question of law :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in upholding the order of the CIT(A) and dismissing the deletion of the addition of Rs.7,03,49,500/- being the on money received by the assessee?"*

3. The impugned order dated 27th May, 2002 of the Tribunal dismissed the Revenue's appeal by following its order on identical issue for Assessment Years 1989-90 and 1990-91, decided on 11th January, 2002 and 17th March, 2002 respectively. The impugned order does not give any independent reasoning to dismiss the appeal of the Revenue as the issue was completely covered by the earlier orders of the Tribunal, both on facts and in law. Thus, reliance is placed on the earlier orders to dismiss the Revenue's appeal. This memo of appeal does not contain the orders of the Tribunal dated 11th January, 2002 and 17th March, 2002 on which reliance is placed by the impugned order of the Tribunal.

4. Be that as it may, the Revenue had also filed appeals from the order dated 11th January, 2002 of the Tribunal to this Court being Income Tax Appeal No.718 of 2002 (Commissioner of Income Tax Vs. Lokhandwala Estate & Development Co. Ltd.) relating to Assessment Year 1989-90. It was dismissed on 22nd September, 2002 for non-prosecution. The Revenue then took out the Notice of Motion No.486 of 2003 seeking to restore the above appeal (Income Tax Appeal No.718 of 2002), which was dismissed on 24th September, 2002. On 20th

November, 2015, Notice of Motion No.486 of 2003 was again dismissed for non-prosecution. No steps thereafter till date, have been taken by the Revenue for recall of the order dated 20th November, 2015 dismissing the Notice of Motion No.486 of 2003 seeking restoration of the appeal dismissed on 24th September, 2002.

5. The Revenue had also filed an appeal to this Court from the order of the Tribunal dated 17th March, 2002 relating to Assessment Year 1991-92 being Income Tax Appeal No.768 of 2002 (Commissioner of Income Tax Vs. M/s. Lokhandwala Estate Development Co. Ltd.). This appeal was dismissed on 13th September, 2004 by following order :-

> *“. None appears for the appellant. Mr.K. Gopal appears for the respondent.*
> *2. Dismissed in default.*
> *3. The Commissioner of Income Tax, Mumbai City – IX, Room No.624, Aayakar Bhavan, M.K. Road, Mumbai – 400 020 is directed to recover the court fee paid on this appeal from the official due to whose inaction and default, the appeal came to be dismissed in default.*
> *4. Let the copy of this order be sent to the concerned Commissioner – appellant herein”.*

6. Thereafter the Revenue took out Notice of Motion No.3658 of 2006 seeking restoration of Income Tax Appeal No.768 of 2002 which was dismissed on 13th September, 2004. The above Notice of Motion No.3658 of 2006 was dismissed on 20th November, 2015 as none

appeared on behalf of the Revenue in support of the motion. No steps thereafter have been taken to have the above order dated 20th November, 2015 recalled and / or set aside.

7. The impugned order, in this appeal relies upon its orders for Assessment Years 1989-90 and 1991-92 dated 11th January, 2002 and 17th March, 2002 respectively. This appeal has been coming up on board for hearing from 6th July, 2017 onwards. Till date no steps have been taken by the Revenue to seek recall of the earlier orders dismissing the two appeals for Assessment Years 1989-90 and 1991-92 or even seek to amend the appeal memo by annexing copies of orders of the Tribunal for Assessment Years 1989-90 and 1991-92. Thus, we see no reason to concede to Mr. Pinto's request to adjourn this appeal for the Revenue to take corrective action.

8. Accordingly, the appeal is dismissed for non-prosecution.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**