IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1137 OF 2015

The Principal Commissioner of
Income Tax- (Central) ....Appellant
V/s.
Jitendra Mansukhlal Shah ....Respondent

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Mr. Nirmal C. Mohanty, Advocate for the appellant.

Dr. K. Shivram, Senior Advocate i/by. Mr. Aditya R. Ajgaonkar and Mr. N.C. Jadhav, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 12TH MARCH, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income-Tax Act, 1961 (the Act), challenges the order dated 4th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order

dated 4th March, 2015 in in respect of Assessment Year 2006-07.

2. The appeal is admitted on the following re-framed substantial question of law :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the disallowance under Section 40(a)(ia) of the Act on the basis of the decision of the Allahabad High Court in case of Commissioner of Income Tax V/s. Vector Shipping Services (P) Ltd.?"*

3. At the request of the parties, the Appeal itself is taken up for final disposal at the stage of admission as the issue stands concluded against the respondent-assessee by the decision of the Supreme Court in the case of **Palam Gas Service V. Commissioner of Income-Tax, reported in [2017] 394 ITR 300 (SC)** and in favour of the Revenue. The Apex Court while holding that the word "payable" occurring in Section 40(a)(ia) of the Act covers not only the amount payable but also the sums

which have been actually paid during the previous year relevant to the subject assessment year. In so holding, the Apex Court has specifically overruled the decision of the Allahabad High Court in *Vector Shipping Services (P) Ltd.* (supra).

4. Dr. Shivram Learned Senior Counsel appearing for the respondent does not dispute the fact that the issue stands concluded against the respondent-assessee by the decision of the Apex Court in the case of *Palam Gas Services Ltd.* (supra). However, he states that certain aspects of the applicability of Section 40(a)(ia) of the Act which were urged before the Tribunal have not been considered in the impugned order. Therefore, a Rectification Application under Section 254(2) of the Act has been filed and the same is awaiting disposal.

5. Be that as it may, today the issue before us is only in respect of the question of law as formulated hereinabove. This question is concluded by the Apex Court decision in *Palam Gas Services Ltd*. (supra) in

favour of the Revenue.

6. Therefore, the above question is answered in the negative i.e. in favour of the appellant-Revenue and against the respondent-assessee.

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