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

INCOME TAX APPEAL NO.533 OF 2016

The Pr.Commissioner of Income Tax-4 … Appellant

V/s.

Shri Kamal Jestaram Kapadia … Respondent

Mr.Suresh Kumar for the Appellant.

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

P.C.:-

1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal (“Tribunal” for short) dated 29th May, 2015.

2. Following question is presented for our consideration:

> “Whether, on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was justified in treating the expenditure incurred by the assessee over and above the actual cost of the new property to make it habitable as part of acquisition cost, even if the additional expense is more than that the actual cost of the property?”

3. Issue pertains to the Assessment Year 2007-2008. The Revenue objects to the assessee claiming an expenditure of Rs.1.73 crores in renovation of a flat purchased by him being as deduction under Section 54 of the Income Tax Act, 1961 ("the Act" for short). The facts on record would reveal that the assessee had after selling his capital asset purchased a flat for consideration of Rs.1.10 crores. On such flat the assessee incurred further expenditure and claimed such expenditure also as part of the deduction under Section 54 of the Act.

4. The Assessing Officer was of the opinion that such additional expenditure on repairs would not qualify for the deduction. The issue eventually at the hands of the Revenue reached the Tribunal. The Tribunal rejected the Revenue's appeal referring to and relying upon several earlier decisions of the Tribunal and holding that the expenditure was for the purpose of making the residential unit habitable. In the process the Tribunal also confirmed the view of the CIT appeals that to the extent of Rs.23,28,562/- which was expenditure incurred by the assessee

for purchase of various luxury goods, such deductions are not allowable.

5. In the impugned judgment the Tribunal has recorded the facts. The assessee had pointed out that he had acquired the flat which was a bare-shell which required further expenditure to make it habitual. The assessee had to undertake renovation, tiles, furnitures and fixtures had to be fitted as per the instructions of the assessee. The Tribunal thereupon concluded that the Revenue was not correct in questioning such expenditure.

6. We notice that the Tribunal had relied on the decision of the Division Bench of Punjab and Haryana High Court in case of **Ashok Syal Vs. Commissioner of Income-tax**[1] in which somewhat similar view was taken. We further notice that a Division Bench of this Court in judgment dated 24th November, 2016 passed in Income Tax Appeal No.708 of 2014 had rejected the Revenue's appeal confirming the decision of the Tribunal granting benefit of additional expenditure incurred by the

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assessee in making the purchased residential unit into habitable.

7. Eventually, the entire issue is based on facts. The Tribunal has assessed the facts on record and accepted the assessee's claim that the expenditure was shown to make the unit habitable No question of law arises. Tax appeal is dismissed.

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

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