R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 473 OF 2016

Pr. Commissioner of Income Tax, Central-2 .. Appellant

Versus

M/s. Skylark Build .. Respondent

....

- Mr. N.C. Mohanty for the Appellant
- Mr. Ruturaj Gurjar for the Respondent

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : NOVEMBER 22, 2018.

P.C.:

1. This appeal under Section 260 A of the Income Tax Act, 1961 (Act), challenges the common order dated 22.5.2015 passed by the Income Tax Appellate Tribunal (Tribunal). The common impugned order relates to the Assessment Years 2008-09 and 2009-10. This appeal relates to Assessment Year 2009-10.

2. The Revenue has urged following two questions of law for our consideration:-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the claim of the assessee cannot be denied for want of genuineness and creditworthiness of the creditor if repayment is proved in subsequent year and restoring the matter to AO only for this limited purpose of verifying repayment ignoring the provisions of Section 68 of the IT Act, 1961 under which onus lies on the assessee to prove the genuineness and creditworthiness of the credit at the time of credit which the assessee had failed to discharge?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing the AO to verify the details of repayment of loan and allow the assessee's claim if the same is found to be correct even if the genuineness and creditworthiness of the creditors cannot be established without appreciating that reversal of entry or squaring up of the loan does not render a cash credit as explained in view of the provisions of Section 68 of the IT Act, 1961?

3. Mr. Mohanty, the learned counsel for the Revenue, very fairly brings to our notice the order of this Court in respect of the Appeal filed by the Revenue from the common impugned order dated 22.5.2015 to the extent it relates to the Assessment Year 2008-09 being Income Tax Appeal No. 616 of 2016 (Pr. Commissioner of Income Tax, Central 2 Vs. M/s. Skylark Build) decided on 24.10.2018 (Coram : S.C. Dharmadhikari & B.P. Colabawalla, JJ). It is pointed out that the very issues arising herein were the subject matter for consideration of this Court in the above order dated 24.10.2018 relating to the Assessment Year 2008-09. In principle, the Court held that the impugned order of the Tribunal calls for no interference.

4. Therefore, in the absence of any distinguishing features in respect of the appeal for the subject assessment year from that in Assessment Year 2008-09 which would warrant a different view, we are bound by the order of this Court dated 24.10.2018.

5. Accordingly, two proposed questions do not give any rise to any substantial question of law, hence, not entertained.

6. Thus, the Income Tax Appeal is dismissed. No order as to costs.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**