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

**INCOME TAX APPEAL NO.1112 OF 2016**

The Commissioner of Income Tax … Appellant

V/s.

M/s Pandit Automotive Limited … Respondent

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Mr.Suresh Kumar for the Appellant.

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**CORAM : AKIL KURESHI AND**
**M.S.SANKLECHA, JJ.**
**DATE : JANUARY 16, 2019.**

**P.C.:-**

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 10th June, 2007 passed by the Income Tax Appellate Tribunal (the Tribunal). This Appeal relates to Assessment Year 2001-02.

2. The Revenue urges the following question of law for our consideration:

> "Whether, on the facts and circumstances of the case, the ITAT was right in relying on the decision in the case of S.A.Builders Ltd. Verses C.I.T(A) and

Another, (2007) 288 ITR 1 (SC), whereas the facts of the assessee's case are clearly distinguishable?”

3. The respondent-assessee carries on business as a dealer in automobiles. During the course of assessment proceedings, the Assessing Officer noticed that the respondent-assessee had borrowed funds to the extent of Rs.27 crores on payment of interest at Rs.5.40 crores. It further noticed that out of these borrowed funds the respondent had advanced an amount of Rs.6.47 crores to its sister concerns. The Assessing Officer disallowed the interest to the extent of Rs.52.78 lakhs being attributable to the loans advanced to the sister concerns.

4. On appeal, the Commissioner of Income Tax (Appeals) (CIT(A)) by an order dated 5th August, 2004 partly upheld the order of the Assessing Officer and limited the disallowance to Rs.50.92 lakhs out of the interest paid on borrowed funds. This on the ground that the above interest is attributable to the borrowed amounts extended as loans to the sister concerns.

5. On further appeal, the Tribunal on examination of the record held that there was no dispute before it that the amounts were advanced to its sister concerns by the respondent. It is also not disputed that the activities of the sister concerns were complementary in nature to the respondent. On the above facts the decision of the Apex Court in case of **S.A.Builders Ltd. Vs. CIT (A) and anr.**[1] was applied to hold that interest free loans are given to its sister concerns by the respondent an account of commercial expediency. Thus, a disallowance of interest paid even to the extent of Rs.50.92 lakhs was deleted.

5. Mr.Suresh Kumar, learned counsel appearing for the revenue submits that the decision of the Apex Court in S.A.Builders Limited(supra) would not have application to the present facts. This on the ground that the sister companies were making losses and the business of the sister companies was not related to the business of the respondent-assessee firm. Thus, the appeal be admitted.

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1 (2007) 288 ITR 1 (SC)

6. We note that the business of the respondent-assessee is that of dealers of automobiles. Its sister concerns to whom monies are advanced, are engaged in manufacture of bus bodies and running of petrol pump. In these facts, both CIT (A) and the Tribunal found that the business run by respondent's sister concerns to whom money is advanced is complementary to its business. The Apex Court in S.A.builders Limited (supra) had held that whether a particular advance made to the sister concerns is on account of business exigency is a decision which the businessman has to take and it is not for the Income Tax Authorities to put themselves in the shoes of the assessee and decide the matter of commercial expediency from the point of view of the profitability. In fact, the Apex Court also observes that no businessman can be compelled to maximize its profits. The only exception in the above order was where the money has been advanced to the sister concerns and the money is not used by the sister concerns/subsidiaries for business purpose, then alone the interest paid on borrowed amounts will be disallowed.

7. In view of the fact the impugned order of the Tribunal has

correctly relied upon the decision of the Supreme Court in case of S.A.Builders Limited (supra) the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. Accordingly, Appeal dismissed. No order as to costs.

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

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