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

INCOME TAX APPEAL NO. 1317 OF 2016

Pr. Commissioner of Income Tax-1 .. Appellant

v/s.
M/s. Killick Nixon Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

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

DATED : 4th FEBRUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following question for our consideration : -

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the assessee has incurred business loss on account of guarantee extended in the ordinary course of business?*

2. The respondent assessee is a limited company, filed its return of income for Assessment Year 2001-02. The Assessing Officer noted a claim of business loss arising out of the assessee's activity of providing

corporate guarantee. The Revenue's contention was that the loss was not suffered in the course of assessee's ordinary business activity and therefore, cannot be claimed as a business loss.

3. After one round of remand, the Tribunal examined the material on record and in particular Memorandum and Articles of Association of the assessee company to come to the conclusion that the said Articles of Association permitted the assessee company to engage in activity of providing corporate guarantees in favour of other persons and entities. It was pursuant to this Article of Association that the assessee had engaged itself in such activity, providing corporate guarantee for credit facilities sanctioned by Vysya Bank to one Geekay Exim (India) Pvt. Ltd. & Ors. In the process, the assessee had incurred loss. The assessee had also taken reasonable steps for making recoveries by filing civil suits. Thus, on facts, the Tribunal hold in favour of the assessee on both counts namely; that the loss was genuine and that it arose out of the assessee's normal business activities.

4. We do not find any error in view taken by the Tribunal. No question of law arises.

5. The tax appeal is dismissed.

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