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

INCOME TAX APPEAL NO.1584 OF 2016

Principal Commissioner of Income Tax-10 … Appellant

V/s.

M/s Plaza Hotels Pvt. Ltd. … Respondent

Mr.Arvind Pinto with Mr.N.C.Ranganayakulu for the Appellant.
Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 05, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal raising following questions for our consideration:-

> "1. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in treating the receipts for the lease of its hotel as business income ignoring the primary fact that the transaction involved the long term lease of a property which should be rightfully taxed as house property income ?
> 2. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in treating the receipts for the lease of its hotel as business income ignoring the finding given by the CIT (A) that the transaction between the assessee and KHIL were not at arms length and therefore,

> for the purpose of determining the fair market value, the provisions of Section 23(1)(a) of the Act are clearly applicable?"

3. Learned counsel for the parties pointed out that identical issue in case of this very assessee had come up for consideration before this Court for Assessment Years 2007-08, 2008-09 in Income Tax No.203 of 2015 and connected appeal. The Court considered such questions in following manner:

> "7. It has been observed that the business was handed over by the respondent assessee to KHIL in the year 1994 and since the assessment year 1995-96 till the assessment year 2005-06, the income from the same was assessed as a business income. The assessment for the year 1995-96 was completed under Section 143(3) of the Income Tax Act. So also, for the assessment year 2003-04 and assessment year 2005-06, the assessment was completed under Section 143(3) of the Income Tax Act. The claim of the assessee of the said income being a business income was accepted.
> 8. The assessee is not receiving any rent amount but is receiving 1% of the total revenue earned by KHIL and does not get any fix amount as rent. These aspects are considered by the Tribunal.
> 9. Question No.2 being dependent upon Question No.1, no substantial question of law arises. As such, the appeal is dismissed. No costs."

4. In the result, this appeal is also dismissed.

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