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

INCOME TAX APPEAL NO.1814 OF 2016

Pr. Commissioner of Income Tax-19 : Appellant.
Versus
M/s. Vishinda Diamonds : Respondent

Mr. A R Malhotra a/w Mr. N A Kazi for the Appellant.
Mr. Subhash Shetty for the Respondent.

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

DATE : FEBRUARY 27, 2019.

P.C.:

1 This appeal under Section 260 A of the Income Tax Act, 1961 (Act), challenges the order dated 29/01/2016 passed by the Income Tax Appellate Tribunal ("**the Tribunal**" for short). This appeal relates to the Assessment Year 2009-2010

1.2 Revenue has urged following two questions of law for our consideration:-

(i) Whether on the facts and circumstances of the case and in Law, the Hon. ITAT was right in holding that "Mark to Market" loss of Rs.1,62,98,847/- arising on revaluation of forward exchange contract on the closing date of the previous year is not a notional loss and therefore allowable?

(ii) Whether on the facts and circumstances of the case and in Law, the Hon. ITAT was right in not taking cognizance of non-uniformity of rates of revaluation adopted for various debtors and also not following the AS-11 categorical guidance on adopting closing rate of currency?"

3 Regarding Question No.(i) Mr. A R Malhotra the learned counsel appearing for the Revenue in support of the Appeal has stated that this issue stands concluded against the Appellant-Revenue and in favour of the Respondent-Assessee by the decision of this Court dated 01/10/2016 in Income Tax Appeal No.278 of 2014 in the matter of Commissioner of Income Tax-16 Mumbai v/s. M/s. D Chetan & Co. and decision dated 11/12/2018 in Income Tax Appeal No.843 of 2016 in the matter of Pr. Commissioner of Income Tax-19 v/s. M/s. Polar Star.

4 In view of above, the question that is raised before us does not give rise to any substantial question of law as the issue sought to be raised here is already concluded. Hence not entertained.

5 Regarding Question No.(ii) we note that it is an undisputed position that this question does not arise from the order of the Tribunal. The impugned order of the Tribunal does not make any mention of any submission being made on behalf of the Appellant – Revenue with regard to the issue

sought to be raised here. Hence not entertained.

6 In view of above, both the questions do not give rise to any substantial question of law, hence, not entertained. The Income Tax Appeal is dismissed.

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