IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 1710 of 2016.

Raheja Chambers Premises Co-op Soc.Ltd. ..Appellant.

Vs

Income-tax Officer, 12 (3) (2), Mumbai & Anr ..Respondent.

Mr. Bharat Damodar I/by Kanga & Co. for the Appellant.

Mr. Suresh Kumar for the Respondents.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 12TH FEBRUARY, 2019.

<u>P.C.</u> :

1 Heard.

2. Admit.

3. With the consent of parties, taken up for final hearing forthwith. This appeal is filed by the assessee

challenging the judgment and order of the Income tax Appellate Tribunal for the Assessment Year 1996-97. The following four questions of law are framed for our consideration:-

> "(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in taking the view that the amount received by the appellant from the transferee did not satisfy the test of mutuality and it was exigible to tax?
>
> (b). Whether on the facts and in the circumstance of the case and in law, the Tribunal was right in taking the view that if an amount in excess of that prescribed in law was charged, the profit motive would pervade and matuality would cease to exist and the amounts collected would be exigible to tax?
>
> (c). Whether on the facts and in the circumstance of the case and in law, the Tribunal ought to have held that the contributions received by the appellant towards the Replacement and Development Reserve was a capital receipt and was not chargeable to tax?
>
> (d). Whether on the facts and in the circumstance of the case and in law, the Tribunal ought to have held that if the Contributions received by the appellant towards the Replacement and Development Reserve was chargeable to tax, the appellant was entitled to a deduction or a set off of the expenditure incurred by it towards repairs and maintenance and other purposes of the society?"

4. It is noticed that identical issues came up for consideration before this Court in Income-tax Appeal No. 26 of 2006 in case of assessee. The Court disposed of the appeal by judgment dated 13th July, 2018. Questions (a) and (b) as in the present appeals

were answered in favour of the assessee. The counsel for the assessee had not pressed question No. (c) and (d). Relevant portion of this judgment reads as under :-

"1. The relevant Assessment Year is 1993-94.
2. Mr. Joshi, learned Counsel in support of the Appeal, do not press Question Nos. (c) and (d).
3. It is an agreed position between the parties that Question Nos. (a) and (b) stand concluded against the Revenue and in favour of the Respondent-Assessee by the decision of the Apex Court in ITO Vs. Venkatesh Premises Co-operative Society Ltd. 402 ITR 670.
4. In the above view, both the questions (a) and (b) are answered in the negative i.e. in favour of the Appellant-Assessee and against the Respondent-Revenue."

5. Under the circumstances, in the present appeal also question (a) and (b) are answered in favour of the appellant. Impugned judgment of the income tax appellate tribunal is reversed to this extent. Question (c) and (d) are not pressed by the learned Counsel in support of the appeal.

(B.P. COLABAWALLA, J.) **(AKIL KURESHI, J)**