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

INCOME TAX APPEAL NO.414 OF 2017

Pr. Commissioner of Income Tax-11 … Appellant
V/s.
M/s Vinca Developers Pvt. Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.
None for the Respondent.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 03, 2019.

P.C.:-

1. This appeal is filed by the Revenue against the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). Following questions are presented for our consideration:-

> "(i) Whether in law and on the facts and in the circumstances of the case, the ITAT is right in confirming the action of the learned CIT (A) in restricting the disallowance of interest made u/s. 36(1)(iii) of the Income-tax Act, 1961 to Rs.12,80,166/-as against Rs.1,62,70,200/- disallowed in the assessment order thereby granting relief of Rs.1,49,90,034/-?
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> (ii) Whether in law and on the facts and in the circumstances of the case, the ITAT erred in restricting the disallowance of interest without

appreciating the fact that the assessee did not have sufficient own funds to give interest-free advances to M/s Ackruti City Ltd and the assessee could not substantiate with corroborative evidence the direct nexus between its own funds and the interest-free advances given to its sister concern, M/s Ackruti City Ltd to the tune of Rs.13,55,85,000/-?

(iii) Whether in law and on the facts and in the circumstances of the case, the ITAT erred in confirming the action of the learned CIT(A) ignoring the ratio laid down in the Kerala High Court Judgment in the case of CIT Vs. V.I.Baby & Co. (254 ITR 248) wherein the Court held that the assessee with liquidity cannot claim that it can give interest-free advances to the partners and other and then borrow funds from the bank on interest for business purpose?"

2. In short, the question is about disallowance of interest expenditure on the ground that the assessee had lent money to the sister concern without charging interest. The Tribunal by the impugned judgment while upholding the decision of CIT (Appeals), came to the conclusion that out of the total advance of Rs.13.55 crores (rounded off) to the sister concern only small portion of Rs.2.78 crores (rounded off) that too for short period, was from interest bearing borrowings. To such extent, interest at the presumptive rate of 12% was charged and presumptive amount was brought to tax. We do not find any error in the

view of the Tribunal. CIT (Appeals) and the Tribunal have concurrently come to the factual findings, which are not seriously in dispute. Legal conclusions based on such findings also call for no interference. No question of law arises. Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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