HIGH COURT OF JUDICATURE AT BOMBAY

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

INCOME TAX REFERENCE NO.430 OF 1997.

The Commissioner of Income-tax,
Mumbai City-V. .. Applicant
Vs.
M/s.Computer Point (I) Ltd., Mumbai. .. Respondent

Mr.Nirmal Chandra Mohanty, for the Appellant.
Mr.Pavan Ved i/b Mr.G.S.Rao, for the Respondent.

CORAM: M.S.Sanklecha
& N.M.Jamdar, JJ.
Friday 24 July, 2015

P.C. :

This reference under Section 256(1) of the Income Tax Act, 1961 in respect of Assessment year 1988-89 seeks our opinion on the following question of law -

> *"Whether, on the facts and circumstances of the case and in law, the ITAT is justified in upholding CIT(A)'s direction to deduct the amount of prior year adjustment out of current year's net profit for arriving at the book profit for the purpose of computation of income u/s.115J of the I.T.Act, 1961?"*

2 This reference was heard first on 10 July 2015. At that time, Mr.Ved learned counsel appearing on behalf of Respondent submitted that the tax effect in the present reference is less than Rs.4 lakhs. Consequently, the reference should be returned unanswered.

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3 In the above circumstances we directed the Revenue to examine the issue of the tax effect involved in the present reference application and file an affidavit indicating the tax effect. Accordingly, Mr.Kumar Rajiv Prasad -Income Tax Officer at Mumbai, has filed an affidavit dated 20 July 2015 inter alia pointing out that the tax effect in this reference for the Assessment year 1988-89 is ₹ 3,03,105/-.

4 Therefore, in view of the Instruction No.5 dated 10 July 2014 read with decision of this Court in **Commissioner of Income Tax Vs Madhukar Inamdar (HUF)** *-318 ITR 149*; **Commissioner of Income Tax Vs Pithwa Engineering Works** – *276 ITR page 598* and ***Commissioner of Income Tax Vs Vijaya Kawekar*** – *380 ITR 237* (dealing with earlier Circulars / Instructions), the instruction No.5 of 2014 issued by CBDT would also be applicable to pending appeals and references.

5 In fact this Court in Madhukar Inamdar (HUF) has while dealing with Circular dated 15 May 2008 observed as under :

> *"8. This Court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, filing of cases at the instance of the Revenue has increased; consequently, the burden on the department has also increased to a tremendous extent. The corridors of superior courts are choked with huge pendency of cases. ……….. In this view the Board has rightly taken a decision not to file appeals, if the tax effect is less than ₹ 4 lakhs so as to reduce the burden of the Department as well as of the Tribunals and courts. The same policy for old matters needs to be adopted*

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by the department, so as to achieve the object of the policy laid down by the Central Board of Direct Taxes."

6 Nothing has been shown to us to indicate that the issue raised in this particular reference would fall within the exclusion clause of the 2014 Instruction No.5/14 nor that the issue has a cascading effect or would otherwise be covered by the decision of Apex Court in **Commissioner of Income Tax v. Surya Herbal Ltd.** - *350 ITR 300*. In view of the above, we return the reference unanswered.

(N.M.Jamdar, J.) *(M.S.Sanklecha, J.)*

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