

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

INCOME TAX APPEAL NO.762 OF 2008

Sea Face Park Co-operative Hsg. So. Ltd. .. Appellant.
v/s.
The Income Tax Officer, Ward 16(2)(1) .. Respondent.

Mr. R. Murlidhar with Mr. Rajesh Poojary I/by Mulla & Mulla & C.B.&C.
for the Appellant.

Mr. Ashok R. Kotangle with Mr. Prabhakar Ramshur for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.**
DATE : 2nd August, 2018.

P.C:-

This Appeal under Section 260-A of the Income-Tax Act, 1961 ('Act') was admitted on 13.8.2008 on numerous substantial questions of law.

2 Mr. Murlidhar the learned counsel appearing in support of the Appeal on instructions states that the Appellant seek to agitate only the following three substantial questions of law:

“(a) Whether on the facts and in the circumstances of the case and in law transfer charges received from the transferees is not covered by the principle of mutuality and is chargeable to tax ?

(b) Whether on the facts and in the circumstances of the case and in law transfer charges received from the transferors in excess of alleged limits is not covered by the principle of mutuality and is chargeable to tax ?

(c) Whether on the facts and in the circumstances of the case and in law non-occupancy charges in excess of alleged limits are not covered by the principles of mutuality and are chargeable to tax ?”

3 It is an agreed position between the parties that the issue arising herein stands concluded by the Apex Court decision in the case of **Income Tax Officer v. Venkatesh Premises Co-operative Society Ltd.** 402 ITR 670. The Apex Court in the common order reported as **Venkatesh Premises Co-operative Society Ltd. (Supra)** also allowed the Appellant's Appeal being Civil Appeal No.1180 of 2015 which arose from judgment and order dated 11.8.2009 passed in Income Tax Appeal No.1340 of 2009 of this Court for an earlier Assessment Year.

4 In the above view, all the three questions being pressed stand concluded in favour of the Appellant-Assessee and against the Respondent-Revenue. This by the decision of the Apex Court in **Venkatesh Premises Co-operative Society Ltd. (Supra)** which also dispose of the Assessee's appeal being Civil Appeal No.1180 of 2015 which has been allowed, from order of this Court dated 11.8.2009.

5 In the above view, all the three questions are answered in the negative, i.e., in favour of the Appellant-Assessee and against the Respondent-Revenue.

6 Appeals allowed.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)