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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.735 OF 2014

Commissioner of Income Tax Central-II, Mumbai .. Appellant.
v/s.
M/s. Greenfield Hotels & Estates Pvt. Ltd. .. Respondent

....

Mr. Ashok Kotangale, a/w. Ms. Padma Divakar, for the Appellant.

Mr. Sanjiv M. Shah, i/b. Sanjay B. Sawant, for the Respondent.

....

CORAM: M.S.SANKLECHA, &
S.C. GUPTE, JJ.
DATE : 24 OCTOBER, 2016.

P.C:-

. This appeal under Section 260-A of the Income Tax Act, 1961 ("the Act") challenges the order dated 23 October 2013 passed by the Income Tax Appellate Tribunal ("Tribunal"). The impugned order relates to Assessment Year 2007-08.

2. The Revenue urges the following question of law for our consideration :

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT(A) in deleting the addition of Long Term Capital Gain of Rs.80,58,000/- on the ground that provisions of section 50C of the IT Act, 1961 were not applicable to transfer of land and building, being a leasehold property?"

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3. The impugned order of the Tribunal has dismissed the Revenue's appeal from the order dated 15 June 2012 passed by the Commissioner of Income Tax (Appeals). The issue before the Tribunal was whether Section 50C of the Act would be applicable to transfer of leasehold rights in land and buildings. The impugned order of the Tribunal followed its decision in **Atul G. Puranik vs. ITO** (ITA No.3051/Mum/2010) decided on 13 May 2011 which held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings.

4. Mr. Kotangale, learned Counsel for the Revenue, states that the Revenue has not preferred any appeal against the decision of the Tribunal in the case of **Atul Puranik** (supra). Thus, it could be inferred that it has been accepted. Our Court in **DIT vs. Credit Agricole Indosuez 377 ITR 102** (dealing with Tribunal order) and the Apex Court in **UOI vs. Satish P. Shah 249 ITR 221** (dealing with High Court order) has laid down the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts or in law in the present appeal from that arising in the case of **Atul Puranik** (supra).

5. In the above view, the question as framed by the Revenue does not give rise to any substantial question of law. Thus, not entertained.

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6. Appeals dismissed. No order as to costs.

(S.C. GUPTE,J.) **(M.S.SANKLECHA,J.)**

High Court of Judicature at Bombay
सत्यमेव जयते

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