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

INCOME TAX APPEAL NO. 876 OF 2013

Commissioner of Income Tax 24	**}**	**Appellant**
versus		
M/s. B. J. Development Corporation	**}**	**Respondent**

Mr. Arvind Pinto for the Appellant.
Mr. S. C. Tiwari with Ms. Priyanka Maru for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATED :- MARCH 30, 2015

P.C. :-

This Appeal of the Revenue is challenging the order dated 26th September, 2012 passed by the Income Tax Appellate Tribunal, Bench at Mumbai. The block period of assessment years 1st April, 1996 to 24th January, 2003 was involved.

2) The Assessee brought to the notice of the Tribunal the basic and undisputed facts. They are that a survey and seizure operation under section 132 of the Income Tax Act, 1961 was conducted on 21st January, 2003 at the residential and business premises of M/s. Keystone Realtors Pvt. Ltd. (for short 'KRPL') and M/s. Rustomjee Landmark Construction Pvt.Ltd. (for short 'RLCPL'). RLCPL is one of the group

companies of KRPL. That is engaged in the real estate dealings. In the case of RLCPL, block assessment under section 143(3) read with section 158BD of the Income Tax Act, 1961 was completed on 31st March, 2005 by the Deputy Commissioner of Income Tax, Central Circle 10, Mumbai. During the course of search, certain evidence was found and seized from the office of RLCPL, which indicated that on-money was received on sale of flats in two projects, namely, “Rustomjee Heritage” and “Rustomjee Adarsh Regal”. That is not recorded in the books of account. In the block assessment order of RLCPL, it was held by the Assessing Officer that these two projects were undertaken by RLCPL and the Assessee before us jointly. Therefore, while completing the block assessment in the case of RLCPL, the Assessing Officer has worked out the amount of on-money receipt on the basis of seized material indicating charging on-money on sale of flats in these two projects at certain figure and which was to be apportioned according to that Assessing Officer in the ratio of 50:50 amongst RLCPL and the present Assessee. In pursuance to the block assessment in the case of RLCPL completed as above, the Assessing Officer in the case of the Assessee before us received a confidential letter dated 31st March, 2005 from the Deputy Commissioner of Income Tax, Central Circle 30, Mumbai. On the basis of this information received and contained in the confidential letter, proceedings under section 158BC were initiated by issuing notice under section 158BD of the Income Tax Act, 1961 on 10th May, 2005. The block assessment was completed and an addition of Rs.1,28,12,145/- being 50% sum derived towards alleged on-money receipts and determined in the manner aforestated was added to the income of the Assessee before us by the Assessing Officer in his order dated 31st May, 2007.

3) The matter was carried in Appeal up to the Tribunal and raising additional ground with regard to the validity of the order under section 158BD read with section 158BC of the Income Tax Act, 1961 for want of inherent jurisdiction. In the initial round of litigation ending in the Tribunal's order dated 2nd September, 2008, the Tribunal remitted the matter back to the Commissioner to examine the legality and validity of the proceedings. Pursuant to the order and direction of the Tribunal, the Commissioner examined it and answered the question framed against the Assessee. The aggrieved Assessee approached the Tribunal in the second round and pointed out that the pre-condition for invoking section 158BD is not satisfied. The Tribunal has found merit in such an objection.

4) The Tribunal extensively dealt with the rival contentions. After setting them out, it has rendered an opinion after noticing the language of section 158BD and the above undisputed facts. It has also

perused the records by summoning them from the file of the Assessing Officer. It found that in the case of RLCPL the block assessment was completed. That was on the basis of the search carried out under section 132 on the premises of a distinct company, namely, KRPL. While assessing the income and scrutinising the return of another company RLCPL that the Assessing Officer having jurisdiction noted the on-money receipt and the presence of the Assessee before us.

5) The Tribunal applying the language of the sections concerned and the Judgment of the Hon'ble Supreme Court analysing it rendered in the case of *Manish Maheshwari vs. Assistant Commissioner of Income Tax* reported in **289 ITR 341** concluded that the principal condition for invoking the provisions was not satisfied. These conclusions and rendered from para 6 to 9 onwards holding that the block assessment under section 158BD read with 143(3) of the Income Tax Act, 1961 is *void ab initio* do not raise any substantial question of law.

6) We are not in agreement with Mr. Pinto that the revised questions of law would arise because the Tribunal has refrained from expressing any opinion on merits. It has not set aside the addition made by the Assessing Officer in the case of the Assessee before us nor sustained it. It has simply quashed the proceedings for want of

jurisdiction and based on the satisfaction which has to be arrived at as a principal condition within the meaning of section 158BD of the Income Tax Act, 1961. Therefore, the Tribunal's conclusion has not, in any manner, prejudiced the Revenue nor affected the other remedies and powers available to it under the Act. It can bring the amounts, if any, to tax and in the case of the present Assessee by taking recourse of law. Therefore, all the more we do not think that the Tribunal's conclusions, which are otherwise not perverse or vitiated by any error of law apparent on the face of the record need to be interfered with by us. The Appeal is therefore not raising any substantial question of law. It is devoid of merits and dismissed accordingly. No costs.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**