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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1116 OF 2013

The Commissioner of Income Tax ..Appellant.
V/s.
NRC Limited ..Respondent.

Mr.Suresh Kumar with Ms.Padma Divakar for the appellant.
Mr.Mihir Naniwadekar for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 17TH MARCH, 2015

P.C. :-

1. We have heard Mr.Suresh Kumar, learned counsel appearing for the appellant and Mr.Mihir Naniwadekar appearing for the assessee.

2. The revenue is aggrieved by the order dated 10th October, 2012 for assessment year 2005-06 passed in Income Tax Appeal No.3811/M/2010. The assessee was aggrieved by the order of the Commissioner of Income Tax (Appeals) in upholding the disallowance upto the extent of ₹11,32,93,915/- under section 36 (1) (vii) / 36 (2) of the Income Tax Act, 1961.

3. We are only concerned with this part of the

Commissioner's and Tribunal's order and the bad debts written of, namely loans given in the normal course of business and interest charged thereon.

4. The Tribunal considered the rival contentions and found that the amount written off was loans and advances. That was because certain loans and advances were made and which the assessee could not recover. Though the assessee was in the business of manufacturing man-made fabrics / yarn, chemicals and power generation, it had also taken to money lending transactions.

5. The revenue contended that the same was not permissible, that was essentially because of the manufacturing and business activities of the assessee and which the revenue viewed and confined it to the above manufacturing and business activities. The assessee was not entitled to advance any loan or lend monies. It was not a finding which was based on this understanding of the revenue.

6. The Tribunal in paragraphs 9 and 10 of the impugned order finds that there is no substance in the version of the revenue simply because clause 52 of the Memorandum

of Association of the assessee company permits it to lend money to such persons and on such terms as may deem expedient and in particular to customers of and persons having dealings with the company. Once the Tribunal understood these were personal loans but given as advances during the course of business activities of the assessee and that the assessee has offered interest on the same as business income for the assessment years 2003-04 and 2004-05 which was accepted by the department, then, a different view cannot be taken. Thus, even in the assessment year 2005-06 the interest on income received the same treatment that the Tribunal concluded that the Commissioner should have allowed the claim in respect of bad debts. The findings of fact from paragraphs 9 to 11 of the impugned order cannot be termed as perverse when they are not vitiated by perversity or any error of law apparent on the face of the record. Particularly, because of the admitted factual position with regard to interest. In the circumstances, this appeal does not raise any substantial question of law. It is accordingly dismissed. No order as to costs.

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