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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1348 OF 2013

The Commissioner of Income Tax-12, Mumbai ..Appellant
V/s.
Jayant H. Modi ..Respondent.

Mr.Suresh Kumar for the appellant.
Mr.Percy Pardiwalla, Senior Advocate with Mr.Sameer G. Dalal for the respondent.

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

DATED : 27TH MARCH, 2015

P.C. :-

1. This appeal of the revenue challenges the order passed by the Income Tax Appellate Tribunal, Mumbai dated 23rd November, 2012. The assessment year is 2006-07.

2. The assessee's appeal has been allowed by the Tribunal and that is why the revenue being aggrieved is before us.

3. Mr.Suresh Kumar submits that the questions of law framed at pages 3 and 4 are substantial questions and,

therefore, the appeal deserves to be admitted. He submits that the Tribunal has erred in interfering with the finding of fact recorded by the assessing officer and the Commissioner of Income Tax (Appeals), being the first appellate authority. The Tribunal could not have applied section 2(22)(e)(ii) of the Income Tax Act, 1961, because, loans and advances were obtained from M/s. JMC Securities Pvt. Ltd. but money lending was not a substantial part of the business of that company. In other words, lending of money was not a substantial part of the business of M/s. JMC Securities Pvt. Ltd. from whom loan was obtained by the assessee. The Commissioner had observed that M/s. JMC Securities Pvt. Ltd. was advancing money only to one entity, namely, M/s.Sonal investment. Rest of the sums were advanced to the employees of M/s. JMC Securities Pvt. Ltd., therefore, the exclusionary clause was not applicable and reliance placed on the judgment of this Court in the case of **Commissioner of Income Tax V/s. Parle Plastics Ltd.** reported in **332 ITR 63** was entirely misplaced.

4. We have perused the appeal paper-book with the assistance of Mr.Suresh Kumar, learned counsel appearing for the revenue and Mr.Pardiwalla, learned senior counsel

appearing for the assessee. We have also perused that part of the Commissioner's order where he observes that M/s. JMC Securities Pvt. Ltd. was not in the business of lending money nor lending of money is a substantial part of the business of the Company. Further, the company advanced loans to only to M/s.Sonal Investment and its employees.

5. However, while the Tribunal was deciding the appeal, it referred to all the material and held that during the year under consideration, the assessee received loans of ₹551.45 lakhs from M/s. JMC Securities Pvt. Ltd. wherein he was holding 1,53,025 equity shares out of total 3 lakhs equity shares issued. The assessee was beneficial owner of shares in the said company holding more than 10% shares and if that company had accumulated profits of ₹3,38,85,459/- as on 31st March, 2006, the assessing officer called upon the assessee who is respondent before us to explain as to why the loan amount to the above extent should not be brought to tax in his hands as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961.

6. In reply, the assessee contended that the main

object of M/s. JMC Securities Pvt. Ltd. was to carry on business as share and stock brokers but its memorandum of association allowed the company to carry on business inter alia of lending or advancing money.

7. The Tribunal also referred to the assessment order in the case of M/s. JMC Securities Pvt. Ltd. for the year under consideration, namely 2006-07, wherein the nature of the business of that company was indicated as finance. The company continued in the business of short term finance of idle funds. M/s. JMC Securities Pvt. Ltd. During the year under consideration, earned interest income to the tune of ₹9,16,088/- which constituted about 70% of its total business income amounting to ₹13,04,088/-. The maximum amount of loan advanced by the company during the year under consideration was to the tune of ₹95,45,000/-. That constituted 32% of the total funds available with the said company. In these circumstances, the Tribunal concluded that that the lending of money is a substantial part of the business of M/s. JMC Securities Pvt. Ltd. The addition made by the assessing officer and sustained by the Commissioner was not valid and legal, particularly in the background facts. In the

light of the undisputed factual position, we are of the view that the Tribunal's order is correct and reliance placed by it on the Division Bench judgment of this Court is not misplaced.

8. So far as question (B) on page 4 is concerned, it is stated that this question is covered against the revenue by the Division Bench of this Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. V/s. DCIT** reported in **(2010) 328 ITR 81.** In any event, direction to recompute the disallowance in the light of this judgment does not give rise to a substantial question of law. In these circumstances, the order impugned cannot be termed as perverse and the finding of fact which is consistent with the factual material placed on record, does not raise any substantial questions of law. The appeal is, therefore, dismissed. No order as to costs.

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