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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.312 OF 1998

Commissioner of Income Tax,]
Mumbai City-III, Mumbai] ..Applicant.

V/s.

M/s. Rupam Pictures Pvt. Ltd.]
C/o. N.V. Vale & Co.,]
National Indian Ins. Bldg.,]
30, Ropewalk Street,]
Mumbai - 400 023.] ..Respondent.

Mr.Suresh Kumar for the applicant.

None for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K.MENON, JJ.**RESERVED ON : 23RD APRIL, 2015****PRONOUNCED ON : 5TH MAY, 2015.****JUDGMENT (PER A.K.MENON)**

1. The Income Tax Appellate Tribunal has referred the following two questions under Section 256(1) of the Income Tax Act, 1961 ('the Act) for the opinion of this Court :-

- (i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the disallowance made u/s.40(c) of the I.T. Act, by the I.T.O. Out of the remuneration of ₹3,00,000/- and ₹1,50,000/- paid to two directors of the company viz. Shri Hrishikesh Mukherjee and Shri N.C. Sippy ?
- (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the business of production of films constitutes an industrial undertaking for the purpose of section 80J of the I.T. Act, 1961 ?

3. The facts pertain to the assessment year 1981-82. The assessee was in the business of production of films. During the relevant year, two directors of the company Mr.Hrishikesh Mukherjee and Mr.N.C.Sippy were paid ₹3,00,000/- and ₹1,50,000/- respectively for directing and producing a film. The Income Tax Officer ('the ITO') applied the provisions of Section 40(3) of the Act which was in force at the relevant time and disallowed the payment in excess of ₹72,000/- in respect of the payments made to each of these persons. The Commissioner of Income Tax (Appeals) upheld the order of the ITO. In second appeal the Appellate Tribunal

relying on its earlier decision on the issue deleted the addition made by the ITO.

4. The assessee had claimed to be industrial undertaking and sought deduction under Section 80J of the Act. The ITO rejecting the application claimed that the assessee being in the business of film production was not entitled for deduction under Section 80J of the Act. The Tribunal relied upon its earlier decision in the case of one D.K. Kondke and allowed the deductions under Section 80J of the Act. This is how the reference came to be made.

5. As far as the second question is concerned, the issue being already decided by this Court in the case of *Commissioner of Income Tax V/s. D.K. Kondke [1991 Mh.L.J. 572]* we proposed to deal with the second question first. By this judgment, this Court has decided Income Tax Reference No.195 of 1977 on 12th March, 1991. This Court observed that if the production of a cinematograph film amounts to manufacture of an article or goods within the meaning of section 104 (40(a) as it then stood, it follows that the said activities must be treated as that of an industrial undertaking

within the purview of Section 80J of the Act. This position was conceded by the counsel for the revenue in that case.

6. Accordingly, the activities of production of a film amounted to manufacturing of an article or goods. The activities be treated as those of an industrial undertaking within the purview of Section 80J of the Act. Even otherwise, this Court was of the view that film production will have to be considered as a manufacturing activity and the undertaking will have to be considered as an industrial undertaking as the same is considered under excise law and other allied laws also. We accordingly, answer this question in the affirmative with a rider that whether the assessee satisfies the conditions of the said Section as it then stood, will have to be ascertained by the authorities below.

7. As far as the first question is concerned, we find that the disallowance made by the ITO under section 40(c) of the Act was not justified. The amounts paid to the two individuals were not paid in their capacity as members of the Board of Directors but these amounts were paid as professional charges for directing and producing a film. The

revenue is, therefore, not justified in disallowing the claim, the character of the remuneration mode being different. As we have observed above, we are of the view that the Tribunal was right in deleting the disallowance. Accordingly, we answer the first question in the affirmative.

8. In the result, both the questions of law referred to us in the present reference are answered in the affirmative i.e. in favour of the assessee and against revenue. There shall be no order as to costs.

(A.K. MENON, J.)

(S.C.DHARMADHIKARI, J.)