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

INCOME TAX APPEAL NO. 2002 OF 2013

Commissioner of Income Tax 10 .. Appellant

v/s.

M/s. ICICI Home Finance Co. Ltd. ..Respondent

Mr. Arvind Pinto for the appellant
Ms. A. Vissinji a/w Mr. S.J. Mehta for the respondent

**CORAM : M.S. SANKLECHA &
G.S. KULKARNI, J.J.**

DATED : 24th NOVEMBER, 2015.

P.C.

1. This appeal under Section 260-A of the Income Tax Act, 1961 (the Act) assails the order dated 30th November, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal pertains to Assessment Year 2005-06.

2. Mr. Pinto, the learned Counsel for the Revenue urges the following question of law for our consideration :-

> *"(i) Whether on the facts and in the circumstance of the case and in law, the Tribunal was correct in its opinion*

> *that the Respondent company was in the business of providing long term finance for development of housing in India, thereby making it entitled for deduction u/s 36(1)(viii), when it had in fact stopped the business of providing housing loans from the financial year 2001-02."*

3. The Respondent-Assessee, is a Housing Finance Company, which filed its returns of income for the Assessment Year 2005-06 declaring its income at Rs.28.55 Crores. The Assessing Officer by his order dated 26th December, 2007 passed under Section 143(3) of the Act, determined the appellant's income at Rs. 28.60 crores.

4. On 21st April, 2009, the Commissioner of Income Tax in exercise of his powers under Section 263 of the Act, issued a notice seeking to revise the order dated 26th December, 2007 of the Assessing Officer. The notice called upon the Respondent Assessee to explain *inter alia* why the order dated 26th December, 2007 of the Assessing Officer to the extent it allows deduction of Rs.10.90 crores under Section 36(1)(viii) of the Act on reserve created should not be revised as it proceeds on the basis that Respondent-Assessee is in the business of proving long term

finance for construction of residential houses. In response, the Respondent Assessee submitted as under :-

> *"During the course of assessment, it was submitted that 1-HFC has discontinued the business of giving fresh housing loans and the same are disbursed by ICICI Bank. <u>However, we would like to draw your Honour's attention to the fact that 1-HFC is still in the business of providing finance for construction of residential houses and continues to source the said loans and service the entire loan portfolio, including the old portfolio, which is still continued in their books.</u> This is evident from the interest income of Rs.197.82 crores earned from the loan portfolio sanctioned and disbursed by 1-HFC and thus 1-HFC is entitled to deduction under section 36(1)(viii) of the Act.*
>
> *<u>In its return of income, 1-HFC had claimed deduction of Rs.109,000,000/- under section 36(1)(viii) @ 40% of its income derived from the business of long term finance from housing</u> computed under the head "Profit and gains from business or profession" before making any deduction under the said clause. The said business income included fee income of Rs.30.92 crores and interest received from other sources of Rs.4.64 crores and other miscellaneous income of Rs.70.71 lakhs. Fee income comprises of processing fees in respect of loans disbursed during the year,*

which is a part of the Company's business of crores earned from fixed deposits with banks, Government, securities too forms a part of the housing business as 1-HFC as per NHB's regulations which mandates companies to invest in certain securities in order to maintain the statutory liquidity ratio. Thus, these income are derived from the business of providing long term finance and are eligible for deduction under section 36(1)(viii) of the Act."

(emphasis supplied)

5. The Commissioner of Income Tax did not accept the submissions of the Respondent Assessee justifying its claim under Section 36(i)(vii) of the Act. The Commissioner of Income Tax in his order dated 15th March, 2010 held that the Respondent Assessee has discontinued giving fresh housing loans and was merely servicing old loans. Therefore, the Commissioner of Income Tax held that the Respondent Assessee was not in the business of providing housing loans in the subject assessment year, so as to be eligible for deduction under Section 36(1)(viii) of the Act. In the above circumstance, the Commissioner of Income Tax held that order dated 26th December, 2007 was erroneous and prejudicial to interest of the Revenue and directed the Assessing

Officer to consider the above issue afresh.

6. Being aggrieved by the order dated 15th March, 2010, of the Commissioner of Income Tax, the Respondent-Assessee filed an appeal to the Tribunal. In the impugned order, the Tribunal *inter alia* records that the Schedule VI of the Balance-Sheet indicates the following details of the loans and other credit facilities given by it :-

	As at 31st March, 2004	As at 31st March, 2005
Housing loans to Individuals	Rs.2280.36 crores	Rs. 2355.75 crores
Housing loans to Corporate	Rs.190.90 crores	Rs.27.27 crores
Other loans	Rs. 11.76 crores	Rs. 35.03 crores

From the aforesaid facts, the impugned order records that there has been an increase in housing loans during the subject Assessment Year. Besides, on perusal of the copy of the return filed with a National Housing Bank which was perused by the Tribunal in absolute number, there were 709 new housing loans disbursed during the subject Assessment Year. On the aforesaid facts, the Tribunal has rendered a finding of fact that the

Respondent-Assessee was carrying on the business of providing long term finance for development of housing in India. Thus, entitled to the benefit of deduction under Section 36(1)(viii) of the Act as claimed. Therefore, exercise of powers under Section 263 of the Act by the Commissioner of Income Tax was not justified.

7. The grievance of Mr. Pinto, learned Counsel for the Revenue is that as the Respondent-Assessee itself had in its reply to the Commissioner's Notice dated 21st April, 2003 under Section 263 of the Act has stated that they had dis-continued giving the fresh housing loans and were merely servicing old loans. It thereafter states that it is still in the business of providing finance for construction of residential houses. In fact, Mr. Pinto submitted that there was a contradiction in the Respondent-Assessee's reply. Thus, it is submitted that the Respondent Assessee is not entitled to claim the benefit of Section 36(1)(viii) of the Act.

8. We find that the impugned order of the Tribunal renders a finding of fact that the Respondent-Assessee during the subject Assessment Year was in the business of providing finance for

construction of residential houses. This conclusion is drawn after noticing the fact that there is not only an increase in the loans advanced during the subject Assessment Year to individuals but also over 700 new housing loans were sanctioned during the subject Assessment Year as was evident from is statutory returns filed with the National Housing Bank. The aforesaid finding of facts would by itself establish that the Respondent-Assessee is entitled to the Section 36(1)(viii) of the Act.

9. The finding rendered by the Tribunal in the impugned order is a finding of fact and the Revenue has not been able to show that the finding of fact is in any manner perverse or arbitrary. Accordingly, the question as framed does not give rise to any substantial question of law.

10. Accordingly, **appeal dismissed.** No order as to costs.

(G.S. KULKARNI, J.) **(M.S. SANKLECHA, J.)**