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

INCOME TAX APPEAL NO. 1854 OF 2014

Commissioner of Income Tax -21 .. Appellant

v/s.

M/s. Sai Shiv Developers ..Respondent

Mr. Ashok Kotangale i/b Ms. Padma Divakar for the appellant
Mr. Subhash Shetty a/w D.C. Jain for the respondent

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

DATED : 14th DECEMBER, 2015.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order of the Tribunal is in respect of Assessment Year 2005-06.

2. The appeal raises the following substantial questions of law for our consideration :-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue and holding the same to be infructuous, without considering the fact that the Revenue has not accepted the Tribunal's order dated 23.05.2012 setting aside the order u/s 263 and has filed an appeal u/s 260A for A.Y. 2005-06 vide ITXA No.210/2013 which is pending and hence not reached finality?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue and holding the same to be infructuous without discussing the issue of deemed dividend?"

3. Re : Question (i) :-

(a) The Tribunal by an order dated 23rd May, 2012 had set aside an order passed under Section 263 of the Income Tax Act passed by the Commissioner of Income Tax both on jurisdiction as well as on merits holding that no issue of deemed dividend arises.

(b) The Revenue filed an appeal being Income Tax Appeal No.211 of 2013 to this Court from the order dated 23rd May, 2012 of the Tribunal. In that appeal, the Revenue has not challenged the order of the Tribunal dated 23rd May, 2012 to the extent it held that the Commissioner of Income Tax could not have exercised jurisdiction under section 263 of the Act.

(c) In the present facts, once having accepted for the Assessment Year 2006-07 that the Commissioner of Income Tax has no jurisdiction to pass an order under Section 263 of the Act and the challenge to the order of the Tribunal on the issue of jurisdiction for Assessment Year 2005-06 has no bearing to the present facts. Thus, there was no occasion for the Tribunal to await the result of an appeal filed on the issue of Section 263 of the Act in respect of the Assessment Year 2005-06 to decide the appeal for Assessment Year 2006-07. Therefore, question no.(i) is not entertained as it does not give rise to any substantial question of law from the impugned order of the Tribunal.

4. Re : Question (ii) :-

(a) It is agreed position between the parties that the issue stands covered against the Revenue and in favour of the Respondent Assessee by the decision of this Court dated 27th January, 2015 in Income Tax Appeal No.211 of 2013 with regard to the said

Respondent Assessee.

(b) For the reasons indicated in our order dated 27th July, 2015 in Income Tax Appeal No.211 of 2013, question (ii) does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, the Appeal is dismissed. No order as to costs.

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