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

INCOME TAX APPEAL NO. 210 OF 2013

Commissioner of Income Tax-21 ..Appellant

Vs.

M/s Sai Shiv Developers ..Respondent

....

Mr. Suresh Kumar, Advocate for Appellant.
Mr. Subhash Shetty a/w Mr. D.C. Jain, Advocates for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 27th JANUARY 2015

P.C.:

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 23rd May 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal') in respect of the assessment year 2005-06.

2. The Revenue has framed the following questions of law for our consideration:

> *"a) Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that for invoking the provisions of Section 2(22)(e) of the Act, the shareholder must be both registered and beneficial shareholder and that the deemed dividend could not be taxed in the hands of a person other than the shareholder?*
>
> *b) Whether the remedy of revision u/s 263 of the Income Tax Act, was barred by the law of limitation?"*

3. So far as question (a) is concerned with regard to the deemed dividend, we find that the impugned order has allowed the appeal of respondent assessee on the above issue by following the Special Bench decision in ***CIT Vs. Bhaumik Colour Pvt. Ltd. 313 ITR 146.*** This decision of the Special Bench of the Tribunal in Bhaumik Colour (supra) has been upheld by this Court in ***CIT Vs. Universal Medicare P. Ltd. (2010) 324 ITR 263.*** We find that the view of this Court in Universal Medicare Pvt. Ltd. (supra) has been again reiterated in ***CIT Vs. Impact Containers Pvt. Ltd. (2014) 367 ITR 346.*** Accordingly the question (a) as raised does not give rise to any substantial question of law, hence dismissed.

4. So far as question (b) is concerned, namely limitation, the impugned order has merely followed the decision of this Court in ***CIT Vs. ICICI Bank Ltd. 343 ITR 74.*** In ICICI Bank Ltd. (supra), this Court has held that the Commissioner of Income Tax can exercise jurisdiction under Section 263 of the Act in respect of an issue covered in assessment order passed in regular proceeding, but not covered in the reassessment order, but the period of limitation in respect of such an issue would commence from the order of assessment in regular assessment proceedings under Section 143 of the Act and not from the reassessment order passed under Section 143 r/w 147 of the Act. The Revenue has not been able to point any distinguishing feature in this case from the order passed by this

Court in ICICI Bank Ltd. (supra). Accordingly, question (b) also does not raise any substantial question of law, hence dismissed.

5. Accordingly, **appeal** is **dismissed.** No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

S.S.DESHPANDE