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

INCOME TAX APPEAL NO. 1048 OF 2014

The Commissioner of Income Tax-3
Mumbai .. Appellant
v/s.
M/s. Bajaj Capital Ventures P. Ltd. .. Respondent

Mr. Ashok Kotangle i/b Ms. Padma Divakar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
MRS. SWAPNA JOSHI, J.J.
DATED : 19th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 2nd August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. The Revenue has urged the only following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in treating interest earned on money lending operation of Rs.1,25,22,877/- under the head "Profits and Gains from Business & Profession" instead of "Income from Other Sources" as held by the Assessing Officer without appreciating that*

the assessee is not an NBFC and hence giving loans and advances to other parties, cannot be considered as business activity".

3. The respondent assessee is engaged in the business of investment and trading. During the subject assessment year, the respondent assessee had claimed that it had earned interest income from its business of money lending. This interest income was claimed as profits and gains of the business. However, the Assessing Officer did not accept the same and held it to be chargeable under the head "income from other sources" in the assessment order dated 20th December, 2010.

4. Being aggrieved, the respondent assessee filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. On examination of the facts before it, particularly the object clause of the respondent assessee to carry out money lending business, the Resolutions passed by its Board of Directors authorizing it to borrow money and also advance loans and the analysis of the bank statement for the concerned period, concluded that the respondent assessee was engaged in the business of money lending in an organized and a systematic manner. It rendered a finding that the activity of money lending is a real and substantive activity on the part of the respondent assessee with a profit motive. Thus, the order dated 16th March, 2012 of the CIT(A) allowed the

appeal.

5. Being aggrieved, the Revenue carried the issue in an appeal to the Tribunal. The Tribunal on the basis of the material available before it rendered a finding that the respondent assessee is engaged in the business of money lending. Therefore, it held that the interest income earned on money lending is classifiable under the head “profits and gains” of business in profession. Therefore, the impugned order of the Tribunal upheld the order of the CIT(A) and dismissed the Revenue's appeal.

6. We find that the two authorities have concurrently come to a finding of fact that the activity of money lending carried out by the respondent assessee is its business activity. This on account of its activity of money lending being in accordance with the object clause of the company, duly supported by the Resolution of its Board of Directors and on examination of entries made in the books of accounts as well as in the bank statement. This findings of fact by the CIT(A) and the Tribunal, are not shown to be perverse and / or arbitrary in any manner. The view taken is a possible view. Therefore, no substantial question of law arises for our consideration. Thus, not entertained.

7. Accordingly, the appeal is dismissed. No order as to costs.

(MRS. SWAPNA JOSHI, J.) **(M.S. SANKLECHA, J.)**