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

INCOME TAX APPEAL NO. 916 OF 2014

Commissioner of Income Tax, Central-II,
Mumbai .. Appellant

v/s.

M/s. Sunil Mantri Trinity Projects Pvt. Ltd. . Respondent

Mr. Suresh Kumar a/w Ms. Padma Divakar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 29th NOVEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 14th November, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

(i) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in confirming the order of CIT(A) that the provisions of section 2(22)(e) of the Income Tax Act, 1961 is not applicable in the case of assessee company without appreciating the fact that the deemed dividend has to be taxed on advances or loan to any concern as defined in Explanation

3(a) to section 2(22)(e) of the Act, in which common shareholder is a member or a partner and such a shareholder has a substantial interest as defined in Explanation 3(b) of section 2(22)(e) of the Act?

(ii) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in confirming the order of CIT(A) that Mr. Sunil P. Mantri was not a shareholder of M/s. Sunil Mantri Trinity Projects P. Ltd. for the period during which loans has been advanced from Sunil Mantri realty Ltd. while the facts accepted by the CIT(A) clearly evidence that the paid-up capital of M/s. Sunil Mantri Trinity Projects P. Ltd. during the period is Rs.50,000/-. This is in straight contradiction to the fact that the minimum paid-up capital for any closely held company should be Rs.1,00,000/- ?

2. **Regarding question (i) :-**

(a) Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that question (i) as framed by the Revenue stands concluded against the Revenue and in favour of the respondent assessee by the decision of this Court in ***Commissioner of Income Tax Vs. Universal Medicare Pvt. Ltd. 324 ITR 263*** and ***Commissioner of Income Tax Vs. Impact Containers (P) Ltd. (2014) 48 taxmann.com 294 (Bom)***.

(b) In the above view, the question (i) does not give rise to any substantial question of law. Thus, not entertained.

3. **Regarding question (ii)** :-

(a) In view of the fact that the share holding of Mr. Sunil Mantri in respondent assessee is of no consequence in view of the decision of this Court in Impact Containers Pvt. Ltd. (supra). This is so as it is undisputed that respondent assessee is not a registered shareholder in the lending company viz. M/s. Sunil Mantri Reality Ltd.

(b) In the above view, question (ii) as formulated being academic does not give rise to any substantial question of law. Thus, not entertained.

4. In the above view, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**