IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2293 OF 2013

Commissioner of Income Tax-2,
Mumbai 400 020 ... Appellant
v/s
M/s Sterlite Infrastructure Pvt.Ltd.,
Mumbai 400 039 ... Respondent

Mr Suresh Kumar for Appellant.
Mr B.V. Jhaveri for Respondent.

CORAM: M.S. SANKLECHA AND
B.P. COLABAWALLA JJ.

DATE : 16TH FEBRUARY, 2016

P.C.:-

1. This Appeal filed under section 260A of the Income Tax Act 1961 (the Act) challenges the order dated 30th April 2013 passed by the Income Tax Appellate Tribunal, Mumbai. The impugned order relates to AY 2007-08.

2. Mr Suresh Kumar, learned counsel for the Revenue urges the following questions of law for our consideration :-

"(A) Whether, on the facts and in the circumstance of the case, the Tribunal was correct in law in holding that the amount received by the assessee company from Agarwal Galvanizing Pvt.Ltd. did not extract the provisions of section 2(22)(e) of the I.T. Act 1961, without appreciating that the share-holder(s) of the assessee company were having substantial interest in Agarwal Galvanising Pvt.Ltd.?"

"(B) Whether, on the facts and in the circumstance of the case, the Tribunal was correct in deleting the addition made under section 2(22)(e) of the I.T. Act 1961 by following the decision in the case of Universal Medicare Pvt.Ltd. which was clearly distinguishable on facts from that of the assessee?"

3. The issue which arises for consideration in the present appeal is whether an amount of Rs.1.88 crores received as unsecured loans by the Respondent – Assessee Company from M/s Agarwal Galvanizing Pvt.Ltd. could be treated as deemed dividend under section 2(22)(e) of the Act in the hands of the Respondent – Assessee. This in view of the fact that some shareholders were common in the Respondent – Assessee and M/s Agarwal Galvanizing Pvt.Ltd. The impugned order of the Tribunal while dismissing the Appeal of the Revenue has followed the decision of this Court in the case of CIT v/s Universal Medicare P.Ltd., reported in (2010) 324 ITR 263.

4. Mr Suresh Kumar, learned counsel for the Revenue very fairly states that the issues stand concluded not only in the case of Universal Medicare P.Ltd. (supra) but also in a later decision of this Court in CIT v/s Impact Containers Pvt.Ltd., reported in (2014) 367 ITR 346. In the above cases, it has been held that dividend, even if deemed dividend has to be taxed in the hands of the shareholder of the Company granting the loan / advance. The Respondent – Assessee is admittedly not a shareholder of M/s Agarwal Galvanizing Pvt.Ltd.

5. In the above view, the questions as formulated being concluded by the decision of this Court do not give rise to any substantial question of law. Thus not entertained.

6. Accordingly, Appeal is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**