IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2411 OF 2013

Commissioner of Income Tax-12,
Mumbai 400 020 … Appellant

v/s

M/s R. Sureshchandra and Co.
Mumbai 400 020 … Respondent

Mr Suresh Kumar for Appellant.
None for Respondent.

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

DATE : 07th JANUARY, 2016

P.C.:-

1. This Appeal by the Revenue under section 260A of the Income Tax Act 1961 challenges the order dated 10th June 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order relates to Assessment Year 2002-2003.

2. The Revenue urges the following question of law for our consideration :-

"(ii) Whether in the facts and circumstances of the case and in law, the ITAT was correct in deleting the

> addition made u/s 2(22)(e) in the hands of the assessee firm relying on the case of M/s Bhaumik Colour Pvt.Ltd. and holding that the amount received can be taxed as deemed dividend only if the shareholder is a registered and beneficial shareholder without appreciating that all the conditions stipulated in section 2(22)(e) of the act were satisfied in the case of assessee firm and accordingly, the amount received has been correctly added as deemed dividend in the hands of the concern i.e. assessee firm."

3. The undisputed facts in this case are :

(a) the Assessee firm had obtained a loan from one M/s Camay Drugs Pvt.Ltd. of Rs.6.24 lakhs;

(b) the Assessee firm is not a shareholder of M/s Camay Drugs Pvt.Ltd. but one of its partner is a shareholder of M/s Camay Drugs Pvt.Ltd.;

(c) the Assessing Officer invoked Section 2(22)(e) of the Act to treat the sum of Rs.6.24 lakhs as deemed dividend;

(d) on appeal, the CIT(A) deleted the additional amount of deemed dividend under Section 2(22)(e) of the Act and

(e) on further appeal, the Tribunal upheld the view of the CIT(A).

4. Mr Suresh Kumar, learned counsel for the Revenue, very fairly states that the issue arising in the present Appeal stands concluded against the Revenue and in favour of the Respondent in the case of Commissioner of Income Tax 9 v/s Impact Containers (P)

Ltd., reported in (2014) 48 Taxmann.com 294 (Bombay) (to which one of us was a party). The impugned order of the Tribunal while dismissing the Revenue's Appeal before it inter alia places reliance upon the decision of the Special Bench in the case of Assistant CIT v/s Bhaumik Colour (P) Ltd., reported in (2009) 118 ITD 1 (Bombay). The aforesaid decision of the Tribunal has been approved by this Court in Impact Containers (P) Ltd. (supra).

5. Mr Suresh Kumar, learned counsel for the Revenue has not been able to show any distinction which would warrant our taking a different view from that taken in Impact Containers (P) Ltd. (supra).

6. Accordingly, the question as formulated does not raise any substantial question of law. Accordingly, Appeal is dismissed. No order as to costs.

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