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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.421 OF 1999

M/s. Hercules Investments Ltd. ..Applicant

Versus

The Commissioner of Income Tax
Mumbai City VI. ..Respondent

....

Mr. J. D. Mistri, Senior Advocate, a/w P. C. Tripathi i/b. Raj Darak for the Applicant.
None for the Respondent.

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

DATE : 2nd MARCH, 2017

P.C.

1. None appears for the Respondent-Revenue. This inspite of the fact that service was completed on 31st March, 2005 as indicated in the affidavit of assessee.

2. This Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) by the Income Tax Appellate Tribunal (Tribunal) seeks our opinion on the following questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in confirming that though the interest paid on borrowings utilised for the purpose of acquisition of shares as dealer in shares and where such shares are held as stock in trade, could be claimed as a deduction under Section

36(1)(iii) in the computation of the business income of the assessee, the same amount will have to be deducted from the income from dividend computed under the head 'Income from other sources' under Section 56, 57 and 58 of the Act for the purpose of determining the amount with reference to which relief under Section 80M has to be granted?

(ii) Whether the Tribunal was right or has erred or misdirected itself in law in holding that the deduction under Section 80M of the Act has to be computed by deducting from the gross dividend all the expenses which were necessary for earning the dividend though in the final computation, the same would be claimed or allowed as business expenses under Section 36(1) (iii) of the Act?"

3. This Reference relates to Assessment Years 1982-83 and 1986-87.

4. The statement of case as sent by the Tribunal states in para 4 thereof as under:-

"On identical facts the assessee was held to be an investor by the Tribunal in Assessment Years 1981-82, 1984-85 and 1985-86 in ITA nos.8163, 7442 and 8164/Bom/88. Similar reference applications were also filed by the assessee for those years in R.A. Nos.2303 to 2305/Bom/93. The Tribunal, by statement of case dated 16/6/95 referred question nos.1 and 4 to this Court for its opinion. The facts in the present years being similar, respectfully following the earlier order of the Tribunal, we refer question nos.1 and 4 to this Court for its opinion. While finalising this draft, we have

considered the suggestions of both the parties."

5. The questions numbered as (1) and (4) in the above statement of case are in fact now renumbered as question nos.(i) and (ii) by us for answering this Reference.

6. The earlier reference made by the Tribunal in respect of Assessment Years 1981-82, 1984-85 and 1985-86 was numbered by this Court as ***ITR No.1 of 1996 M/s. Hercules Investments Ltd. v/s. CIT.*** On 29th April, 2009 the question no.(i) as formulated hereinabove was answered in the negative i.e. in favour of the assessee and against the respondent-Revenue by the order dated 27th April, 2009 of this Court.

7. In view of the above, following the decision of this Court in Hercules Investments Ltd. (supra) rendered on 29th April, 2009 the identical question no.(i) as framed for our opinion is followed for the reasons mentioned therein. Thus question no.(i) is answered in the negative i.e. in favour of the assessee and against the Revenue.

8. In view of our answer to question no.(i) above in negative, question no.(ii) becomes academic. Thus does not call for our opinion.

9. Reference is disposed of in the above terms. No order as to costs.

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