IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 586 OF 2015

Pr. Commissioner of Income-Tax ....Appellant
V/s.
Dina Sudhir Shah ....Respondent

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Mr. P.C. Chhotaray, Advocate for the appellant.

Mr. Madhur Agrawal a/w. Mr. Jas Sanghavi and Mr. Viraj Bhate, i/by. PDS Legal, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 2ND JULY, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 25th September, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 25th September, 2014 is in respect of Assessment Year 2008-09.

2 Mr. Chhotaray for the Revenue urges the following re-framed question of law, for our consideration:

"1. Whether on the facts and in the circumstance of the

case and in law, the Tribunal was right in giving benefit to assessee in applying the proportionate cost to International Transaction, though it is against the provision in Rule 10D of IT Rules, in which the assessee needs to maintain all details of each International Transaction including the cost attributed to it ?

2. Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal failed to appreciate the fact that the assessee had never provided the cost corresponding to sales of Cut & Polished Diamonds to its AE of Rs.9,59,06,519/- and the basis for the same ?

3. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in not upholding the order of the Commissioner of Income Tax (A) and allowing the appeal of the assessee by restricting the adjustments only on international transactions on proportionate basis without appreciating that (a)the assessee had adopted TNMM at entity level to justify its controlled transactions on the basis of overall margins and (b)the presumption underlying the arm's length principle is that uncontrolled transactions are at arm's length and therefore, if the overall margin is less than the arm's length margin, the shortfall must be on account of AE transactions and not on pro rata basis ?

4. Whether the Tribunal erred in holding the amount of Rs.43.00 lakhs and Rs.12,99,655/- as withdrawal from credit balance of the assessee when the same was not proved before the Assessing Officer and not treating the same as deemed dividend under Section 2(22)(e) ?"

3. **<u>Regarding Questions no.1 to 3 :</u>**

. So far as three questions are concerned, the basic issue is whether the Transfer Pricing Adjustment has to be done at entity level or only in respect of transactions with Associated Enterprises (AE). This issue is no longer res-integra so far as this Court is concerned. Identical questions urged by the Revenue of absence of maintaining segmental accounts would necessarily lead to entity level adjustment and the issue of presumption that if overall margins are less than arms length margin, then the shortfall must be attributed only to AE transactions were not entertained in the following decisions :

(1) **CIT-8 vs. Petro Araldite Pvt. Ltd.** (ITA No. 1804 of 2013) rendered on 24th November, 2015.

(2) **CIT-5 vs. M/s. Sumit Diamond (India) Pvt. Ltd.** (ITA No. 1647 of 2013) rendered on 11th January, 2016.

(3) **CIT-8 vs. Goldstar Jewellery Design (P) Ltd.** (ITA No. 2237 of 2013) rendered on 4th February, 2016.

(4) **CIT-1 vs. M/s. Hindustan Unilever Ltd,** (ITA No. 1873 of 2013) rendered on 26th July, 2016.

(5) **CIT-I vs. M/s. Lanxess India Pvt. Ltd.** (ITA No.335 of 2014) rendered on 29th August, 2016.

(6) **CIT-1 vs. Alstom Projects India Limited** (ITA No. 362 of 2014) rendered on 14th September, 2016.

(7) **CIT-16 vs. M/s. Bhansali & Co.** (ITA No. 1066 of 2014) rendered on 9th December, 2016.

(8) **CIT-8 vs. Phoenix Mecano (India) Pvt. Ltd.** (ITA No. 1182 of 2014) rendered on 7th June, 2017.

4 In the above view, as the issue is covered by the aforesaid decisions of this Court, the questions as proposed does not

give rise to any substantial question of law. Thus, not entertained.

6 **<u>Regarding Question no.4 :</u>**

(a) We note that the impugned order of the Tribunal is a pure finding of fact. The Revenue contends that the amount of Rs.43 lakhs and Rs.12.99 lakhs which are withdrawn from M/s. Dinurje Jewellery (P) Ltd. (Dinurje) is in the nature of Loans and Advances and therefore deemed dividend hit by Section 2(22)(e) of the Act. The Tribunal on facts found that the respondent had withdrawn from her own credit balance in M/s. Dinurje.

(b) Therefore, the Tribunal held that the withdrawal made by the assessee from its own amounts lying with M/s. Dinurje cannot be treated as Loans and Advances within the meaning of Section 2(22)(e) of the Act. In the above facts, the Tribunal has deleted the addition made on account of the above deemed dividend.

(c) We find that the above deletion of the Tribunal was on account of pure finding of fact. In the above view, no substantial question of law arises. Thus, not entertained.

7. Accordingly, Appeal dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**