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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 843 OF 2017***

The Pr. Commissioner of Income Tax-3,
Mumbai.

... Appellant

V/s.

M/s. Vibhadeep Investment &
Trading Ltd.

...Respondent

Mr. Sham Walve a/w. Pritish Chattergee for the Appellant.

***CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.***

DATE : 11 SEPTEMBER 2019.

P.C. :-

The Appellant – Revenue has challenged the order passed by the Income Tax Appellate Tribunal, Mumbai dated 19 August 2016 dismissing the Appeal filed by the Appellant.

2. The relevant Assessment Year to which the present Appeal pertains to is 2008-09.

3. The Appellant – Revenue has presented the following question which according to it is a substantial question of law :-

“A. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal of the revenue on the issue of deletion of addition of Rs.8,41,34,321/-, being disallowance of principal amount of loan waived off by the lender on account of one time settlement of loan with Mafatlal Finance Company Ltd., holding that the loan was acquired for acquisition/investment of capital assets as such its waiver cannot be termed as revenue receipt ? ”

4. The Respondent – Assessee is in business of investment in shares, bonds and debentures. The Respondent had obtained loan from one M/s. Mafatlal Industries Ltd. The Respondent - Revenue had during the previous year relevant to the Assessment Year entered into one time settlement with Mafatlal Finance Co. Ltd. by which the principal amount of loan to the extent of Rs.8,41,34,321/- payable by the Respondent was waived off. The Respondent filed its return of income for Assessment Year 2008-09 on 30 September 2008 declaring total income at Rs.3,77,24,331/-. The return filed by the Respondent – Assessee was selected for scrutiny and the statutory notice to that effect was issued by the Assessing Officer. The Respondent submitted its reply. The Assessing Officer passed an order under Section 143(3) of the Income Tax Act, 1961 on 6 October 2010 assessing the total income of the Respondent at Rs.12,33,24,300/-. The amounts of Rs.8,41,34,321/- was disallowed being waiver of loan on the ground that the waiver of loan amount had the character of revenue receipt as the liability had ceased. The

Assessing Officer accordingly passed the assessment order on 6 October 2010 assessing the income at Rs. 12,33,34,300/- after, inter alia, disallowing the amount of Rs.8,41,34,321/- as above.

5. The Respondent – Assessee filed an Appeal before the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) by order dated 23 February 2012 upheld the contention of the Respondent and observed that the amount of the waiver of loan cannot be a revenue receipt making it taxable under Section 28 or under Section 41 of the Income Tax Act, 1961. However, the Commissioner (Appeals) dismissed the Appeal of the Respondent to the extent it made a grievance of disallowance of interest expenditure. The Appellant – Revenue filed appeal to the Tribunal to the extent the Commissioner of Income Tax (Appeal) held that Rs.8,41,34,321/- cannot be added as income. The Respondent filed a cross objection before the Tribunal to the extent interest of Rs.14,65,654/- was disallowed.

6. The Tribunal by the impugned order dated 19 August 2016 dismissed both the Appeal of the Revenue and Cross Objection of the Respondent. This by upholding the view of Commissioner of Income Tax (Appeals).

7. Mr. Walve, the learned Counsel for the Appellant - Revenue contended that the order passed by the Assessing Officer

was correct in law and ought not to have been interfered with the Commissioner of Income Tax (Appeals) and the Tribunal. He contended that the Assessing Officer had justifiably made the addition of Rs.8,41,34,321/- as it was a revenue receipt.

8. We have considered the submissions. Both, the Commissioner of Income Tax (Appeals) and the Tribunal, after considering the evidence and the facts on record have rendered a finding of fact that the loan was taken from acquisition of capital assets. Thus, the waiver of loan being waived off could not be termed as a revenue receipt. Thus, there is a concurrent finding of fact recorded on this count by the Authorities. During the assessment proceedings the Assessing Officer had asked the Respondent to explain why the principal amount of Rs.8,41,34,321/- should not be offered to tax. The Respondent had made submissions that for chargeability under Section 41(1) of the Act, there should have been actual allowance made in the assessment of the assessee in the earlier year. The Commissioner of Income Tax (Appeals) and the Tribunal followed the decisions of this Court in the case of *Mahindra and Mahindra Ltd. vs. CIT*¹ which has now been upheld by the Apex Court in *Commissioner v/s. Mahindra & Mahindra Ltd.*² The Court, on similar facts had held that on such waiver of loan taken on capital account, neither the Section 41(1) of the Act nor Section 28(iv) of the Act, are applicable. Thus, the question is no longer *res-integra*.

¹ (2003) 261 ITR 501(Bom)

² 2018(93)Taxmann.com 32

On facts, no error or perversity in the factual findings recorded is shown and on law the issue stands concluded by the decision in *Mahindra & Mahindra*. Therefore, the question as proposed does not give rise to any substantial question of law.

9. The Appeal is dismissed.

NITIN JAMDAR, J.

M.S. SANKLECHA, J .