

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1407 OF 2017

Pr.Commissioner of Income-Tax-2. ... Appellant.
V/s.
Homi Mehta & Sons Pvt.Ltd. ... Respondent.

Mr.Suresh Kumar for the Appellant.

CORAM : NITIN JAMDAR AND
M.S. KARNIK, JJ.

DATE : 7 January 2020.

P.C. :

Heard the learned counsel for the Appellant.

2. By this appeal under section 260A of the Income Tax Act, 1961, the Appellant has challenged the order dated 9 September 2016 passed by the Income Tax Appellate Tribunal.

3. This appeal pertains to the assessment year 2008-09.

4. The Appellant- Revenue has raised various questions of law in the appeal memo, however, question of law No.4(1), in our

opinion, would suffice as the questions of law Nos.4(2) to 4(6) are in the nature of arguments in support of question of law No.4(1).

5. The Respondent- Assessee had advanced loans to its subsidiary company. The loan was interest bearing. The Respondent- Assessee claimed that the subsidiary company became loss making company and the Respondent- Assessee took a decision to write off the loan and claim the same as bad debts. The said claim has been denied by the Assessing Officer on two counts (i) that the Respondent- Assessee was not in the business of giving loans and, therefore, conditions of section 36(2) of the Income Tax Act, 1961 were not satisfied and (ii) that the claim of the Respondent- Assessee of loan becoming bad debts was not genuine as the Assessee was knowing that the loan was not recoverable. The Commissioner of Income Tax (Appeals) confirmed the decision of the Assessing Officer, however, the Tribunal held in favour of the Respondent- Assessee holding that the claim of the Assessee was allowable.

6. The decision of the Supreme Court in the case of *S.A.Builders Ltd. v. Commissioner of Income Tax (Appeals), Chandigarh*¹ holds the field on the issue of the assessee not being in the business of giving loans. The decision of the Madras High Court in the case of *Commissioner of Income Tax v. Y.Ramakrishna & Sons Ltd*² relied upon by the Tribunal deals with genuineness of the

1 (2007) 158 Taxman 74 (SC)

2 (2010) 326 ITR 315 (Madras)

claim of loan being a bad debt. In the decision decision of of this Court in the case of *Commissioner of Income-tax v. Star Chemicals (Bombay) (P) Ltd.*³ and in the the decision of the Supreme Court in the case of *T.R.F. Ltd. v. Commissioner of Income-tax*⁴, it is laid down that after the amendment of 1 April 1989, it is not necessary for the Assessee to establish that the debt has, in fact, become irrecoverable and if the Assessee writes off the same as bad debts, it would serve the purpose.

7. In view of the above decisions, the question raised in the present appeal stands covered and does not give rise to any substantial question of law. Appeal is, therefore, dismissed.

(M.S. KARNIK, J.)

(NITIN JAMDAR, J.)

3 (2008) 220 CTR 319 (Bombay)

4 (2010) 190 Taxman 391 (SC)