

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.**

**INCOME TAX APPEAL (L) NO.2985 OF 2009**

The Commissioner of Income Tax,  
Central-III. ...Appellant.

Vs.

M/s.Ashok Commercial Enterprises. ...Respondent.

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Ms.Padma Divakar for the Appellant.

Mr.Ajay R.Singh for the Respondent.

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**CORAM : DR.D.Y.CHANDRACHUD AND  
J.P.DEVADHAR, JJ.**

**February 9, 2010.**

**P.C. :**

The office objections are overruled and the Registry is directed to number the appeal.

Three questions have been formulated in the appeal by the Revenue, against the judgment of the ITAT which pertains to Assessment Year 1998-99:

“1. Whether, on the facts and in the circumstances of the case and in law, the Hon’ble Tribunal was right in not appreciating that the AO had made the addition of notional rent under the deeming provisions of section 23(1)(a) and whether the Tribunal is right in deciding the appeal on this issue in favour of the assessee relying on the decision of Bombay High Court in CIT vs. J.K.

investors, (48 ITR 723) ?

-2. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in not considering that the assessee was not able to establish that it had sufficient interest free funds for investments and the AO had correctly found that a sum of Rs.10.46 crores was non-income bearing investment made out of interest paid funds?

-3. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is right in holding that accrual of the income would be there only when there was a right to receive and such right should be legally enforceable, relying on the judgment of Supreme Court in the case of E.D. Season & Co. vs. CIT (26 ITR 27)?"

2. In the grounds, as they have been framed, particularly grounds 1 and 3 above, the Revenue seeks to find fault with the Tribunal for relying upon the judgment of this Court in the case of **J.K.Investors**,<sup>1</sup> (in so far as question 1 is concerned), and upon the judgment of the Supreme Court in **E.D.Sassoon and Company vs. CIT**,<sup>2</sup> (in so far as question 3 is concerned). We have perused the grounds of appeal and we do not find even an effort on the part of the Revenue to submit that the judgments are distinguishable. It is inexplicable as to how the fault can be found

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1 248 ITR 723

2 26 ITR 27

with the ITAT for relying upon binding judgments of this Court or, as the case may be, of the Supreme Court. Be that as it may, we will now deal with each question separately.

3. In so far as Question 1 is concerned, the Tribunal has relied upon the judgment of this Court in **J.K. Investors** in coming to the conclusion that the value of a notional advantage like notional interest on deposit cannot form part of actual rent. Counsel appearing on behalf of the Assessee has placed on the record, an order passed by the Supreme Court on 1<sup>st</sup> November 2002 in Petition for Special Leave to Appeal (Civil) CC 5480 of 2001, by which the Supreme Court held that there was no justifiable reason to interfere with the judgment of the Division Bench of this Court in **J.K. Investors**. The Special Leave Petition was dismissed. In the circumstances, no substantial question of law can be said to have arisen, particularly when the Tribunal has followed a judgment of this Court. At the cost of repetition, we may note that during the course of the submissions, no effort has been made to urge before this Court that the judgment is distinguishable for any reason.

4. In so far as Question 2 is concerned, the Tribunal has entered a finding of fact that the Assessee had its own funds in excess of Rs.12 crores. The interest which was disallowed by the Assessing Officer pertains to an investment of Rs.10.52 crores. The Tribunal held that since the interest free funds available with the Assessee were sufficient to meet its investments, it could not be held that the investments were made out of loan funds. Following the judgment of the Division Bench in **CIT vs. Reliance Utilities and Power Ltd.**, (2009) 313 ITR 340 (Bom), the Tribunal held that if the Assessee had funds available, both interest free and loaned, there would be a presumption that the investments were out of the interest free funds if the interest free funds were sufficient to meet the outlay on the investment. In the present case, having regard to the finding of fact that the assessee had sufficient interest free funds, no substantial question of law would arise.

5. In so far as Question 3 is concerned, the Tribunal has followed a decision of the Supreme Court in **E.D.Sassoon** (supra).

The Supreme Court has held that income can be said to have accrued only when there is a right to receive and such a right is legally enforceable. In the present case, the finding of the Tribunal is that until the fixed deposits attained maturity, the depositor did not have a legally enforceable right to receive the interest on a fixed deposit. The case of the assessee that the interest on the fixed deposit would accrue only on the date of maturity has been accepted. Counsel appearing on behalf of the Revenue has not demonstrated to the Court any reasons as to why the principle laid down in **E.D.Sassoon** (supra) by the Supreme Court would not be attracted. In the circumstances, no substantial question of law would arise. The appeal shall accordingly stand dismissed.

( Dr.D.Y.Chandrachud, J.)

( J.P.Devadhar, J.)