IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.129 OF 2005

The Commissioner of Income Tax ..Appellant.

V/s.

M/s.S.D.Investment & Trading Co. ..Respondent.

Mr.R.Ashokan for appellant.

Mr.Ramesh C.Sahu i/b. S.K.Shrivastav & Co. for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 1ST APRIL, 2008.

P.C. :-

1. Heard learned counsel for the appellant and learned counsel for the respondent. In the above appeal, the revenue is seeking to raise the following substantial questions of law:-

4a) Whether on the facts and circumstances of the case and in law, the Tribunal is right in holding that the notional interest should not be charged in spite of the fact that the borrowed funds were utilized for non business purposes ?

b) Whether on the facts and circumstances of the case and in law, the Tribunal is right in holding that cash deposited in the bank account is explained and, therefore, it should not be treated as unexplained cash credit and should not be added to the income of the respondent ?

2. The relevant assessment year is 1997-98.

3. We have perused the order of the Tribunal. The finding recorded by the Tribunal in paragraph No.7 is that the assessee is in the business of financing is not dispute by the revenue. The dispute of the revenue is against the non charging of interest on some of the interest bearing amounts advanced to some concerns. A finding is accordingly recorded by the Tribunal in this connection.

4. The interest free loans were given by the assessee as a prudent businessman with certain commercial and business purpose in mind. The interest bearing funds in the present case has been used for the purpose of business. A businessman cannot be expected to and does not make profit out of each and every transaction entered into by him.

5. Thereafter, the Tribunal has given a finding that the interest free advances of Rs.1,54,20,945/- given represents only 8.8% of loans aggregating to Rs.17,52,67,529/-. The above finding is a merely a finding of fact.

6. As regards the second question, during the

course of assessment it was found that the assessee had deposited cash of Rs.7,25,000/- on 5th August, 1996 and the explanation given by the assessee was that it was advance against the sale of air conditioning units received from different parties. The Tribunal after considering the explanation and confirmation has given a finding to the effect that the ledger accounts of the parties in the books of accounts have duly been confirmed by mentioning "We hereby confirm the above statement". The above findings are merely findings of fact and there are no substantial questions of law involved. The appeal, therefore, devoid of any merit is dismissed with no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)