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

INCOME TAX APPEAL NO.1472 OF 2013

Commissioner of Income Tax-2

..Appellant

-Versus-

M/s. SBI DHFL Ltd.

..Respondent

.....
Mr. Suresh Kumar for the Appellant.

Mr. Sanjiv M. Shah for the Respondent.
.....

**CORAM: S. C. DHARMADHIKARI AND
A. K. MENON, JJ.**

DATE :- 8th APRIL, 2015.

PC.:

This Appeal of the revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai, and for the assessment year 2003-04.

2] The order passed on 31st January, 2013 and impugned in this Appeal deals with the revenue's questions and grounds. The principal ground on which the revenue was aggrieved was a relief that the assessee obtained and from the First Appellate Authority. The argument of the revenue's representative and throughout appears to be that interest bearing borrowed funds were utilized by the assessee entirely for the

purpose of its business and investment in tax free bonds having been made by the assessee out of its own funds. The disallowance made under section 14A was uncalled for and that is the conclusion which was reached by the first appellate authority. The Assessing Officer, on the other hand, had held that the assessee had kept all the funds in one common pool and in the absence of separate cash flow statement maintained by the assessee, it was not possible to establish that the investment in tax free bonds was made only out of its own funds. The Assessing Officer applied an estimation and proceeds to holds that since the borrowed funds of the assessee at the relevant time were 69.9% of the total funds, the utilization of borrowed funds for making tax free bonds of Rs.10.50 crores at Rs.716.58 lakhs and interest attributable to the said borrowed funds would have to be taken into account. The average rate of interest was applied by the Assessing Officer and which he proceeded to disallow in the assessment completed by him.

3] The Commissioner and the Tribunal both held that there was no warrant for such an estimation. The Commissioner held that no interest expenditure can be allocated to the earning of the tax free income received by the assessee on tax free bonds. The Tribunal held that the Commissioner rightly interfered with the order of the Assessing Officer.

The decision of the Commissioner was upheld by the Tribunal and the view taken by the Commissioner as also the Tribunal is in consonance with the law laid down by this Court in the case of Reliance Utilities Power Ltd. 313 ITR 314. The view taken also has been in consonance with the law laid down by this Court in the case of Godrej & Boyce Mfg. Co. V/s. Deputy Commissioner of Income Tax reported in 328 ITR 81.

4] In these circumstances, we find that merely because that there is a common pool of funds, a presumption that the investment yielding tax free returns is made by the assessee out of its own funds cannot be raised. Such a view of the Tribunal, therefore, does not raise any substantial question of law.

5] However, Mr. Suresh Kumar relied upon para 71, 72 and 73 in the judgment of Godrej & Boyce (supra). He submits that the matter be remitted back to the Assessing Officer for verification and scrutiny particularly on the amounts indicated in this judgment.

6] We do not see any basis to grant his request. Before the Division Bench judgment in Godrej & Boyce (supra) at least some material was produced so as to warrant a sending back of the matter to the Assessing

Officer. Therefore, the Additional Solicitor General pointed out that reference is made only to the reserves and there is no mention of interest-free funds. It was urged that the reserves shown on the liability side of the balance sheet and are represented by a variety of assets on the assets side. These assets can be fixed or non-liquid assets and hence, incapable of any investment. Therefore, the inquiry as to whether the interest-free funds were available on the assets side and in the absence of sufficient proof of such availability, the presumption could not be raised. That was the inquiry which was warranted and that is why the matter came to be remitted and restore to the file of the Assessing Officer. That was to find out whether the assessee Godrej & Boyce had incurred any expenditure in relation to the earning of income which does not form part of a total income and question of the expenditure of disallowance.

7] We do not find that any such inquiry is necessary and in the absence of any request in that behalf made to the Tribunal, nor the necessary materials having been produced either before the Tribunal or before us. We, therefore, decline this request of Mr. Suresh Kumar.

8] As a result of the above discussion, neither of the questions are substantial questions of law requiring any determination by this Court.

The issues are fully covered in favour of the assessee and against the revenue. The Appeal is, therefore, dismissed. No costs.

(A. K. MENON, J.)

(S. C. DHARMADHIKARI, J.)

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