IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 69 OF 2015

THE COMMISSIONER OF INCOME TAX,
PANAJI. ... Appellant

Versus

SALGAOCAR MINING INDUSTRIES PVT.
LTD., ... Respondent

Ms. Asha A. Desai, Advocate for the appellant.
Shri P. J. Pardiwalla, Senior Advocate with Advocate Shri Ashwin D. Bhobe for the respondent.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 2nd May, 2016

P.C.

Heard Ms. Asha Desai, learned Advocate appearing for the appellant-Revenu and Shri P. J. Pardiwalla, learned Senior Advocate appearing for the respondent.

2. The above appeal filed by the appellant/Revenue challenging the order of the learned Income Tax Appellate Tribunal (ITAT), deleting the additions made by the Assessing Officer of Rs.10,94,885/- under Section 14 A, read with Rule 8D of the Income Tax Act. The challenge is also to the deletion of the additions of Rs.48,60,08,180/-relating to capital expenditure incurred on major dry-docking expenses for ships which substantially extend the life of the ships by taking into consideration the Judgment reported in (SC) 293 ITR 2011 in the case of Commissioner of Income-tax vs.

Saravana Spinning Mill Pvt. Ltd..

3. During the course of hearing of the above appeal, it was not disputed by the learned Counsel appearing for the appellant that as far as similar expenditure referred to in the second contention, for the assessment year 2008-2009 which is the previous assessment year, the authorities have taken a view that such expenditure is revenue expenditure and not capital expenditure. Hence, for the reasons stated in the order passed today in Income Tax Appeal No.70 of 2015 (The Commissioner of Income Tax, Panaji Vs. Salgaocar Mining Industries Pvt. Ltd.) for the assessment year 2008-2009, we find that the finding of fact arrived at by the authorities below to the effect that such expenditure is revenue expenditure cannot be re-appreciated in the present appeal under Section 260A of the Income-tax Act, as there is no perversity in such findings. Hence, the second substantial question law would not arise in the present appeal.

4. As far as the first proposed substantial question of law is concerned, we find on perusal of the order passed by the ITAT that there is a categorical finding therein that the Revenue-Appellant herein was unable to point out that the calculations carried out by the Commissioner of Income Tax (A) towards deduction in terms of Section 14A, read with Section 8D of the said Act are incorrect. Shri Pardiwalla, learned Senior Advocate appearing for the respondent pointed out that the dis-allowance of Rs.10,94,885/-

was the addition by the A.O. of the interest which was not expenditure incurred in connection with the subject dividend on shares which were allotted in a family settlement in respect of the company known as "Tungabhadra Minerals Private Limited". The learned Tribunal has noted that the DR could not bring any evidence before the learned Tribunal to show that the calculations of the learned CIT(A) are not as per Rules. Therefore, the learned Tribunal had no other alternative than to endorse the action by the CIT(A). In fact, the CIT(A) held that the Assessee had not paid any interest on acquiring investments and consequently, the learned CIT(A) has restricted this disallowance to Rs.5,10,283/-. The learned Tribunal, as such, found that the CIT(A) is justified in such action and consequently, held that there was no fault committed by the CIT(A) while coming to such conclusion. As such, we find that there is no substantial question of law, on this count, which arise in the present appeal. No fault has been pointed out by the learned Counsel appearing for the appellant-Revenue to such conclusion. Therefore, the substantial question of law, as proposed by the appellant-Revenue would not arise in the present appeal.

5. Hence, there are no substantial questions of law which arise in the present appeal. The appeal stands, accordingly, dismissed.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

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