IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1850 OF 2016

Godrej Investments Pvt. Ltd. .. Petitioner
V/s.
Income Tax Appellate Tribunal
Through the Registrar and Ors. .. Respondents.

Mr. Jitendra Jain i/by Atul Jasani, Advocates for Petitioner.
Mr. Suresh Kumar with Ms. Samiksha Kanani, Advocates for Respondents.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 16th MARCH, 2016.

P.C:-

At the request of the counsel, the Petition is being disposed of finally at the stage of Admission.

2 This Petition under Article 226 of the Constitution of India challenges the order dated 6.1.2016 passed under Section 254(2) of the Income-tax Act, 1961 (Act) by the Income-tax Appellate Tribunal (Tribunal). The impugned order rejects the Petitioner's application for rectification of the order dated 17.4.2015 under Section 254(1) of the Act for the assessment year 2009-2010. The order dated 17.4.2015 was a common order disposing of appeals filed by the Revenue and the Petitioner.

3 The grievance of the Petitioner is that the impugned order does not consider various issues raised by the petitioner in its rectification application. Besides, the impugned order in the rectification application filed by the Petitioner, the Tribunal has revised the grounds of the appeal of the Revenue before it without the Petitioner being given any notice of the same and thereafter rejecting the Petitioner's rectification application.

4 The grounds of the appeal taken by the Revenue in its appeal from the order dated 1.6.2012 of the CIT (A) before the Tribunal were as under:

> "*1.(a) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 14A, r.w. Rule 8D, made by the AO.*
> *(b) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the disallowance suo-moto offered by the assessee was reasonable as it was based on scientific working.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee has not provided the working as to how the suo-moto disallowances u/s 14A were computed.*
> *3. The appellant prays for appropriate relief bases on the said ground of appeal and the facts and circumstances of the case.*
> *4. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*"

It is on the basis of the above grounds that Tribunal passed the order dated 17.4.2015 which the Petitioner sought to rectify.

5 However, the impugned order on the Petitioner's rectification order incorporates fresh grounds of appeal in the Revenue's appeal and the same reads as under:

> "*1(a) On the facts and in the circumstances of the case as well as in law, the Ld. CIT (A) erred in deleting the disallowance u/s. 14A r.w. Rule 8D, made by the AO.*
> *1(b) On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) erred in holding that the disallowance suo-moto offered by the assessee was reasonable as it was based on scientific working.*
> *2. On the facts and in the circumstances of the case as well as in law, the Ld. CIT (A) erred in not appreciating the fact that the assessee has not provided the working as to how the suo-moto disallowances u/s.14A were computed.*
> *3(a) On the facts and in the circumstances of the case as well as in law,, the Ld. CIT(A) erred in holding that sec.14A is not applicable for the purpose of computing Book Profit u/s.115JB of the Income Tax Act.*
> *3(b) On the facts and in the circumstances of the case as well as in law, the Ld. CIT (A) erred in directing the AO not to consider the disallowance u/s.14A amounting to Rs.3,10,04,504/-, as computed by AO, while computing Book Profit u/s.115JB of the Act.*
> *3.c) without prejudice to the above, the CIT(A) further erred in restricting the amount of disallowance u/s.14A to Rs.1,08,11,971/- for the purpose of computing Book Profit u/s.115JB of the Act.*"

It is on this revised grounds of appeal, that the rectification application of the Petitioner has been disposed of.

6 It is further grievance of the Petitioner that the revised grounds of appeal on the part of the Revenue which find place in the impugned order of the Revenue's appeal were never furnished to the Petitioner.

7 We find that the impugned order passed by the Tribunal clearly exhibits a flaw in the decision making process. There is no mention in the impugned order as to what was the basis for revising the grounds of appeal filed by the Revenue in rectification application filed by the Petitioner. The Tribunal was concerned only with regards to the Petitioner's application for rectification. Thus, the Petitioner was not given any opportunity to deal with the revised grounds of appeal and it is not clear as to whether the revised grounds of appeal were at all filed by the Revenue. Nothing has been placed by the Revenue on record that any application has been filed by them, seeking revision of its grounds of appeal before or after the order dated 17.4.2015.

8 In the above view, we set aside the impugned order of the Tribunal dated 6.1.2016 and restore the Petitioner's Miscellaneous Application bearing no.150/Mum/2015 to the Tribunal for fresh disposal in accordance with law.

9 Petition stands disposed of in the above terms. No order as to costs.

(A.K.MENON,J.) **(M.S.SANKLECHA,J.)**