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

INCOME TAX APPEAL NO. 390 OF 2014

Commissioner of Income Tax-7
Mumbai .. Appellant

v/s.

M/s. Reliance Petromarketing Ltd. .. Respondent

Ms. S.V. Bharucha a/w Ms. Padma Divakar for the appellant
Mr. J.D. Mistri, Senior Counsel a/w Mr. Raj Darak, Mr. P.C. Tripathi for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 23rd AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th September, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. The Revenue has urged following questions of law for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the amount raised by the assessee by way of loan and interest*

expenditure pertaining thereto is for the purpose of business of the assessee being in nature of commercial expediency in view of the decision of Hon'ble Supreme Court in case of S.A. Builders Ltd. whereas the factual matrix of the case makes it very clear that the entire amount raised by way of convertible debenture was advanced by the assessee as a loan to the sister concern and the assessee has failed to prove that the loan was raised for the purpose of business of the assessee?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in setting aside the issue of disallowance u/s 14A read with Rule 8D relying on the decision of Bombay High Court in the case of Godrej and Boyce Manufacturing Co. Ltd. Vs. DCIT (328 ITR 81) which has been challenged by the revenue before the Hon'ble Supreme Court?

3. <u>Regarding Question (i) :-</u>

(a) In the previous year relevant to A.Y. 2007-08, the respondent assessee had issued 1,32,50,000 Zero Coupon Secured optionally convertible redeemable debentures (debentures) of the face value of Rs.1,000/- each at a discount of Rs.400/- per debenture. These debentures were redeemable in 2011 at a face value of Rs.1,000/- each. The difference of Rs.400/- was amortised by the assessee over this entire period i.e. from date of issue to date of redemption. During the subject assessment year, the respondent assessee amortised Rs.85.82

cores out of total discount of Rs.530 cores and claimed the same as business expenditure in its return of income. The Assessing Officer by assessment order dated 22nd September, 2009 disallowed the claim for deduction on two counts, one that it was capital expenditure and secondly he added the deduction claimed under Section 41(1) of the Act to the income.

(b) Being aggrieved, the respondent assessee carried the issue in appeal. The first Appellate Authority after holding that Section 41(1) of the Act would have no application nor is it capital expenditure, disallowed the claim of expenditure on the ground that the deduction of discount claimed was in the nature of interest free advances given to sister concern and, therefore, not wholly and exclusively expended for purposes of its business under Section 37 of the Act. On further appeal, the Tribunal by the impugned order held that the issue of debentures is in fact a loan and the discount on its issue is a business expenditure. It further held that it was an undisputed position that the amounts given / advanced by the assessee to its sister concern, in the same line of business as that of the assessee and having business connection with it. The impugned order of the Tribunal placed reliance upon the decision of the Apex Court in ***S.A. Builders Ltd. Vs. Commissioner of Income Tax (Appeals), 288 ITR 1*** to render a finding of fact that the amounts of discount given on issue of debentures was for the business / commercial expediency and allowable as an expenditure. The impugned order also holds that investment is one of its objects, therefore, a part of its business activity.

(c) The grievance of the Revenue before us is that the decision of the Apex Court in *S.A. Builders Ltd. (supra)* calls for reconsideration as noted by the Apex Court in its order dated 30th April, 2012 while admitting Special Leave Petition in *Additional Commissioner of Income Tax Vs. Tulip Star Hotels Ltd (unreported copy tendered across the bar)*. Therefore, according to the Revenue the reliance upon the decision of the Apex Court in *S.A. Builders (supra)* is not justified. Thus, the appeal requires admission.

(d) It is not disputed before us in the present facts that issue of debenture was a loan and discount, was in the nature of interest / expenditure for the loan. We find that the decision of the Apex Court in *S.A. Builders (supra)* still holds field as its operation has not been stayed. Therefore, the Tribunal was justified in relying upon a binding decision of the Apex Court in *S.A. Builders (supra)* to examine the case of the respondent assessee before it to determine whether the expenditure was on account of commercial expediency and on facts held it to be so. This on account of undisputed position that the debentures were issued to a sister concern in the same line of business having business connection with each other.

(e) Thus, in view of the binding decision of the Apex Court in S.A. Builders (supra), question (a) does not give rise to any substantial question of law. Thus, not entertained.

4. **Regarding Question (b)** :-

(a) The Assessing Officer invoked Rule 8D of the Income Tax Rules while disallowing expenditure under Section 14A of the Act. On further appeal, the Commissioner of Income Tax (Appeals) upheld the disallowance by the Assessing Officer on invocation of Rule 8D of the Income Tax Rules, 1961. None of the two Authorities sought to apply reasonable method for the purposes of disallowing the expenditure claimed.

(b) The respondent assessee filed an appeal to the Tribunal. However, the Revenue accepted the order of the CIT(A) holding that Rule 8D of the Act would alone be applicable as the same being procedural would apply retrospectively. The impugned order places reliance upon the decision of this Court in the case of ***Godrej and Boyce Manufacturing Co. Ltd. Vs. Dy. Commissioner of Income Tax 328, ITR 81*** to hold that as the subject assessment year is A.Y. 2007-08, Rule 8D of the Rules could not be invoked. In the above view, the impugned order allowed the appeal of the respondent assessee. It may be noted that the impugned order holds that on merits, Section 14A of the Act will not apply. However, no appeal on this aspect has been filed by the Revenue.

(b) Ms. Bharucha, learned Counsel for the Revenue very fairly states that the issue stands concluded against the Revenue by the decision of this Court in *Godrej & Boyce (supra)*. In the above case, this Court has held that disallowance under Section 14A of the Act on application of Rule 8D of the Rules would only apply from A.Y. 2008-09, prior thereto it has to be by a reasonable method.

(c) Therefore, question (b) as formulated does not give rise any substantial question of law. Thus, not entertained.

5. Accordingly, Appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**