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

INCOME TAX APPEAL NO. 958 OF 2014

Commissioner of Income Tax-2 .. Appellant

v/s.

M. Pallonji & Co. Pvt. Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. J.D. Mistri, Senior Counsel a/w Mr. Balasaheb Yewale i/b Rajesh Shah & Co. for the respondent

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

DATED : 18th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 30th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

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

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in allowing the claim of

deduction u/s 80IA of the Act of Rs.47,76,303/- on the income generated from the Wind Mill unit, even though it was not allowable as there was no income from the unit in view of the carry forward unabsorbed depreciation available for set-off?

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in restoring the matter of disallowance u/s 14A of the Income Tax Act, 1961, to the file of the Ld. CIT(A) without going into the merits of the computation by the Assessing Officer on the basis of the judgment of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (328 ITR 81) which has not been accepted by the Income Tax Department and SLP No.12872 of 2011 has been filed before the Hon'ble Apex Court?

3. **Regarding question (i) :-**

(a) Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that the issue arising herein also arose for consideration in an appeal filed by the Revenue from the order of the Tribunal for the A.Y. 2006-07 against the same respondent assessee being Income Tax Appeal No.469 of 2014. However, by order dated 26th September, 2016, this Court dismissed the Revenue's appeal.

(b) We find that the impugned order of the Tribunal has placed reliance upon its orders for Assessment Years 1997-98 and 1998-99 to dismiss the Revenue's appeal on the aforesaid issue. This is exactly identical to the manner in which the Tribunal had passed its order for A.Y. 2006-07 which was a subject matter of the above appeal filed by the Revenue being Income Tax Appeal No.496 of 2014.

(c) No attempt was made by the Revenue to show any distinguishing features in the impugned order from that existing in the order challenged in Income Tax Appeal No. 496 of 2014 for Assessment Year 2006-07. Accordingly, question (i), for the reasons indicated in our order dated 26th September, 2016 in Income Tax Appeal No.496 of 2014 does not give rise to any no substantial question of law. Thus, not entertained.

4. <u>Regarding question (ii) :-</u>

(a) The impugned order of the Tribunal set aside the disallowance made under Section 14A of the Act by invoking Rule 8D of the Income Tax Rules for Assessment Year 2005-06. The impugned order has merely restored the issue to the Assessing Officer to determine the dis-allowance under Section 14A of the Act on a reasonable basis. This was by following the decision of this Court in ***Godrej & Boyce Manufacturing Co. Ltd. Vs. Dy. Commissioner of Income Tax, 328 ITR 81***. In the above decision, this Court has held that prior to

Assessment Year 2008-09, the Assessing Officer has to consider disallowance under Section 14A of the Act on a reasonable basis and only from Assessment Year 2008-09 onwards the Assessing Officer entitled to invoke Rule 8D of the Income Tax Rules to determine the disallowance.

(b) Therefore, as the impugned order while restoring the issue to the Assessing Officer has merely followed the decision of this Court, no substantial question of law arises for our consideration. Thus, not entertained.

5. Therefore, the appeal is dismissed. No order as to costs.

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