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

INCOME TAX APPEAL NO. 989 OF 2014

Commissioner of Income Tax-4
Mumbai .. Appellant

v/s.

Wallfort Financial Services Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. Atul Jasani for the respondent

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

DATED : 25th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 20th 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 urges 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 remitting the issue to the file of the Assessing Officer in respect of treatment of

business income of Rs.6,31,13,631/- as against Short Term Capital Gain claimed by the assessee?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the Ld. CIT(A) and directing the Assessing Officer to recompute the disallowance to be made u/s 14A of the Act by applying Rule 8D of the Income Tax Rules, 1961?

3. Regarding question (i) :

(a) The impugned order of the Tribunal allowed the respondent assessee's appeal before it on the issue raised herein by following its order in the case of the same respondent assessee for Assessment Year 2006-07. Therefore, just as in the Assessment Year 2006-07, in the subject Assessment Year the issue was restored to the Assessing Officer for fresh adjudication in the light of the order passed by the Tribunal in respect of the same respondent assessee for Assessment Year 2005-06.

(b) Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that the issue on merits stands covered by the order of the Tribunal for Assessment Year 2005-06, in as much as no appeal on the issue raised herein was preferred by the Revenue from the order of the Tribunal pertaining to the A.Y. 2005-06 in its appeal filed in this Court being Income Tax Appeal No. 1872 of 2011. Therefore, the Revenue could have no grievance if the appeal for the subject assessment year is decided by the Assessing Officer in accordance with the Tribunal order for Assessment Year 2005-06.

(c) Accordingly, in view of the above, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

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

(a) The impugned order of the Tribunal followed the decision of this Court in ***Godrej and Boyce Manufacturing Co. Ltd. Vs. DCIT, 328 ITR 81*** while upholding the order of the CIT(A) who had restored the issue to the Assessing Officer to determine the dis-allowance under Section 14A of the Act by adopting reasonable basis. This direction was given by the CIT(A) and upheld the Tribunal was in view of the decision of this Court in Godrej & Boyce (supra) which holds that prior to A.Y. 2008-09, dis-allowance under Section 14A of the Act should be made on the reasonable basis and it is only from A.Y. 2008-09 onwards Rule 8D of the Income Tax Rules can be invoked to determine the disallowance.

(b) Therefore, as the impugned order has merely followed the decision of this Court in Godrej & Boyce (supra) while restoring the issue to the Assessing Officer to recompute the dis-allowance under

Section 14A of the Act on reasonable basis, no substantial question of law arises for our consideration. Thus, not entertained.

5. The appeal is dismissed. No order as to costs.

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