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

INCOME TAX APPEAL NO. 27 OF 2014

The Commissioner of Income Tax,
Central-II, Mumbai .. Appellant
v/s.
Palm Grove Beach Hotels Pvt. Ltd. ..Respondent

Mr. Ashok Kotangale a/w Arun Nagarjun i/b Ms. Padma Divakar for the appellant
Mr. Sanjay B. Sawant for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 11th JULY, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 22nd March, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. The Revenue has urged the following question 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 deleting the disallowance made by the Assessing Officer and confirmed by the CIT(A) of interest expenses amounting to Rs.59.79 lakhs u/s 14A of the Income Tax Act?*

3. During previous year relevant to the subject assessment year, the respondent assessee had earned dividend income of Rs.1.54 crores and share of profit from partnership firm at Rs.1.54 lakhs. It had claimed both the above incomes are exempt under Section 10 of the Act. The respondent assessee did not offer any disallowance under Section 14A of the Act in respect of the investment made to earn the above income. However, the Assessing Officer by his order dated 29th December, 2010 held that Section 14A of the Act is applicable and computed the disallowance at Rs.76.71 lakhs on the investments made to earn the above exempt income. On first appeal, the order of the Assessing Officer was upheld by an order dated 21st June, 2011 passed the Commissioner of Income Tax [CIT(A)].

4. On further appeal, the Tribunal observed that disallowance of Rs.76.71 lakhs comprises two elements as under :-

(a) Rs.59.79 lakhs as interest disallowed

(b) Rs. 16.92 lakhs other expenses disallowed at 0.50% under Rule 8D of the Income Tax Rules, 1961 (Rules).

5. After recording the above, the impugned order rendered a

finding on fact that investment which led to the exempt income under Section 10 of the Act was Rs.34.44 crores. As against the above, amount of Rs.34.44 crores its own free reserves and share capital available was to the extent of Rs.119.85 crores as indicated in the balance-sheet of the respondent assessee. In the above view, the impugned order of the Tribunal followed the decision of this Court in ***Commissioner of Income Tax Vs. Reliance Utilities and Power Ltd. 313 ITR 340*** to hold that if the interest free funds are available with the assessee and are sufficient to meet its investment, then it would be presumed that the investment have come out of its interest free funds. In the above view, the impugned order deleted the addition of Rs.59.79 lakhs made in view of disallowance of expenses under Section 14A of the Act.

6. So far as second issue is concerned, the order of the CIT(A) disallowing an amount of Rs.16.92 lakhs was upheld by the impugned order of the Tribunal. This on application of Rule 8D of the Rules as the year under consideration was A.Y. 2008-09.

7. The Revenue is aggrieved by the impugned order, deleting the addition of Rs.59.70 lakhs on account of interest paid as the investment

was made by the respondent assessee out of its own funds and not borrowed funds. The assessee has accepted the decision of the Tribunal with regard to other expenses of Rs.16.92 lakhs being disallowed under Section 14A of the Act read with Rule 8D of the Rules.

8. We find that the Revenue's grievance before this Court is not well founded as the deletion of the addition of Rs.59.70 lakhs on account of interest by the impugned order is covered in favour of the assessee by the decision of this Court in *Reliance Utilities and Power Ltd. (supra)*. It is an undisputed position in this case that interest free funds available with the assessee are much more than the investments made to earn exempt incomes as in the case of *Reliance Utilities and Power Ltd. (supra)*. Thus, the presumption applies. Further, nothing has been shown to us to warrant taking a different view to that taken in *Reliance Utilities and Power Ltd. (supra)*. In view of the fact that the question as raised stands concluded by the decision of this Court in favour of the respondent assessee and against the Revenue, no substantial question of law arises for our consideration.

9. Accordingly, appeal is dismissed. No order as to costs.

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