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

INCOME TAX APPEAL NO. 151 OF 2014

The Commissioner of Income Tax-4
Mumbai ..Appellant
v/s.

M/s. Bakliwal Financial Services (I) Pvt.Ltd. .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 16th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 10th May, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 10th May, 2014 is in respect of Assessment Year 2007-08.

2. Mr. Kotangle, learned Counsel for the Revenue urges only following two questions 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 addition made on account of interest of Rs. 46,84,997/- paid on Bank OD and unsecured loan, even though before the appellate*

proceedings, the assessee failed to discharge its liability that the loans has not been used for the purpose of business only?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restricting the disallowance u/s 14A only to the extent of 5% of dividend income arbitrarily without any reasonable basis ?"

3. Regarding question (i) :-

(a) We find that the impugned order records the fact that the interest free advances made by the respondent assessee to its sister concern was to the extent of Rs.28.67 crores at a time when it had its own interest free funds available to the extent of Rs.41.84 crores. Therefore, in view of the decision of this Court in ***Commissioner of Income Tax Vs. Reliance Utility and Power Ltd. 313 ITR 340*** wherein it is held that if both interest free funds and interest bearing funds are available, then a presumption arises that investments / advances have been made out of interest free funds, the disallowance of interest payment of Rs.46.84 lakhs made to the bank was deleted. This was since interest free advances are much less than the interest free funds available with the respondent assessee giving rise to the presumption as laid down in *Reliance Utility Power Ltd. (supra)*.

(b) In view of the above, as the impugned order of the Tribunal has only followed a binding decision of this Court in *Reliance Utilities (supra)*, the issue as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. <u>Regarding Question no.(ii) :-</u>

(a) The Assessing Officer dis-allowed an expenditure of Rs.49.14 lakhs under Section 14A of the Act by invoking Rule 8D of the Income Tax Rules, 1962.

(b) In appeal, the CIT(A) held that in view of the binding decision of this Court in ***Godrej and Boyce Manufacturing Ltd. Vs. Dy. Commissioner of Income Tax, 328 ITR 81*** the Rule 8D cannot be invoked for the subject assessment year i.e. A.Y. 2007-08. In the above view following a reasonable method, the Commissioner of Income Tax (Appeals) disallowed expenditure under Section 14A of the Act to the extent of 5% of the dividend earned.

(c) The further appeal by the Revenue to the Tribunal was dismissed. This on the basis that the disallowance made by the CIT(A) at 5%, the exempt dividend income is reasonable. The impugned order observes that in a number of cases the disallowance made at 2% of the exempt income, was held to be reasonable.

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

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

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