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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2188 OF 2013

The Commissioner of Income Tax 8 ..Appellant
Versus
M/s. J. P. Morgan Services India Pvt. Ltd. ..Respondent

....
Mr. Arvind Pinto for the Appellant.
Mr. Atul Jasani for the Respondent.
....

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

DATE : 21ST MARCH, 2016

P.C.:

1. This Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the "Act") takes exception of the order dated 23rd April, 2013 passed by the Income Tax Appellate Tribunal ("Tribunal"). The impugned order dated 23rd April, 2013 relates to Assessment Year 2005-06.

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

> "(a) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in allowing the assessee's

claim of deduction under Section 10A in respect of interest on fixed deposits and tax refund by holding it to be income under the head 'Profits & Gains of Business or Profession' without appreciating that the assessee had itself not made any such claim in its return of income and therefore, such claim was not allowable being contrary to the scheme of the Act as enshrined in Section 143(2) of the Act as elucidated in Board's Circular No.549?

(b) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in allowing the assessee's claim of deduction under Section 10A in respect of interest on fixed deposits and interest on tax refund by holding it to be income from 'Profits & Gains of Business or profession' without appreciating that the interest income had accrued to the assessee on account of deposits and tax refund and thus had no immediate nexus with the industrial undertaking, deduction was not admissible in view of the ratio of the decision of the Hon'ble Supreme Court in the case of Liberty India 317 ITR 218?”

(c) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that brought forward unabsorbed depreciation and business loss for set-off against the current year's profit of the same 10A unit?

3. **Regarding Question no.(a)**

(i) So far as question no.(a) is concerned, we find that the Revenue has not raised the issue before the Tribunal that as the appellant had not claimed in its Return of Income that interest on deposits is to be classified under the heads 'Profits & Gains of Business or profession' it could not now urge the same before the Appellate Authorities. On being specifically asked Mr. Pinto, the learned counsel for the Revenue candidly states that from the reading of the impugned order of the Tribunal, it is clear that such a contention was not raised by the Revenue before the Tribunal. Thus, question no.(a) does not arise from the impugned order of the Tribunal.

(ii) In any view of the matter, this issue on merits stand concluded by the decision of this Court in ***CIT v/s. Pruthvi Brokers & Shareholders Pvt. Ltd. (2012) 349 ITR 336*** where it has been held that not raising an issue before the original authority would not bar the party from raising the issue before the Appellate Authority.

(iii) In the above view, question no.(a) as framed does not give rise to any substantial question of law. Thus not entertained.

4. **Regarding Question no.(b)**

(i) So far as question no.(b) is concerned, the issue relates to interest on deposit which the impugned order of the Tribunal holds is chargeable to tax under the head 'Profits & Gains of Business or Profession' and consequently eligible for deduction under Section 10A of the Act. However, Mr. Pinto submits that in any view the interest on delayed tax refund would not be covered under the head 'Profits and Gains of Business'. When asked, Mr. Pinto fairly states that the issue of classification of interest on tax refund was not agitated before the Tribunal. We are of the view that the above issue of interest on tax refund not to be treated as interest on deposits was not agitated by the Revenue before the Tribunal. Thus this issue not arising from the order of the Tribunal, does not arise for our consideration.

(ii) In any case we find that the impugned order of the Tribunal has followed its decision rendered in the Respondent-Assessee's case reported in ***33 SOT page 327*** for A.Y. 2004-05. Mr. Pinto is unable to point out any distinguishable features in the present Appeal which would warrant our taking a different view from that having been taken in the order passed by the Tribunal for the A.Y. 2004-05. Moreover, nothing has been shown to us which would indicate that the Tribunal's order for the A.Y. 2004-05 has not been accepted by the Revenue.

(iii) In these circumstances, question no.(b) as framed also does not give rise to any substantial question of law. Thus not entertained.

Regarding Question no.(c)

3. So far as question no.(c) is concerned, Mr. Pinto, learned counsel for the Revenue very fairly states that the issue stands covered against the Revenue by the decision of this Court in ***CIT v/s. Black & Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72***. In the above view, the question as framed does not give rise to any substantial question of law. Thus not entertained.

4. Accordingly, the Appeal is dismissed. No order as to costs.

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