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

INCOME TAX APPEAL NO. 771 OF 2014

The Commissioner of Income Tax-4
Mumbai .. Appellant

v/s.

Darashaw & Co. Pvt. Ltd. .. Respondent

Mr. Ashok Kotangle i/b Ms. Padma Divakar for the appellant
Mr. Ryan Saldanha for the respondent

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

DATED : 5th DECEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th June, 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 the 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 justified in restricting the

disallowance made by the Assessing Officer u/s 14A of the Income Tax Act to only 5% of the tax-free dividend income?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that Vsat and Transaction Charges paid to the Stock Exchange by the Assessee Company were allowable as a deduction from taxable income even though the assessee company had failed to deduct TDS thereon?"

3. <u>Regarding question (i) : -</u>

(a) The impugned order of the Tribunal allowed the respondent assessee's appeal against the order of the authorities under the Act, disallowing the expenditure of Rs.24.66 lakhs under Section 14A of the Act. The authorities under the Act had invoked Rule 8D of the Income Tax Rules to compute the dis-allowance of expenditure under Section 14A of the Act. It is an undisputed position that this Court in ***Godrej and Boyce Manufacturing Co. Ltd. Vs. Deputy Commissioner of Income Tax, 328 ITR 81*** has held that Rule 8D of the Income Tax Rule is applicable only prospectively from Assessment Year 2008-09 onwards and prior thereto on reasonable basis.

(b) In the present case, the Tribunal by the impugned order whilst adopting a reasonable method disallowed the expenditure by 5% of the tax-free dividend income. Mr. Kotangle, learned Counsel for the Revenue in support of the appeal is unable to point out as to why the dis-allowance at 5% under Section 14A of the Act of the dividend income made by the impugned order of the Tribunal is not reasonable.

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

4. Regarding question (ii) :-

(a) Mr. Kotnagle, learned Counsel for the Revenue very fairly states that the issue arising herein stands concluded against the Revenue and in favour of the respondent assessee by the decision of the Supreme Court in ***Commissioner of Income Tax Vs. Kotak Securities Ltd. 383 ITR 01.***

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

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

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