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

INCOME TAX APPEAL NO. 355 OF 2015

Commissioner of Income Tax-2 .. Appellant
v/s.
M/s. Sheba Properties Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
None for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.
DATED : 1st AUGUST, 2017

P.C.

1. The appeal pertains to Assessment Year 2007-08.

2. The appeal is filed on the following questions of law :-

(1) Whether on the facts and in the circumstances of the case and in law, the Hon'ble High Court was right in applying the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT (2010), 328 ITR 082 (Bom.), when the Hon'ble Supreme Court has not adjudicated on Godrej & Boyce Mfg. Ltd. under Article 141 of the Constitution of India?

(2) Whether on the facts and in the circumstances of the case and in law, the Hon'ble High Court was correct in law in setting aside the dis-allowance u/s 14A of the I.T. Act, 1961 by relying on the decision of the Hon'ble Bombay High Court in

the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT (2010) 328 ITR 082 (Bom), when the department has not accepted the principle laid down by the said decision as evidenced by the SLP filed and the issue involved has not been decided on merit by the Apex Court?

(3) Whether on the facts and in the circumstances of the case and in law, the Hon'ble High Court was correct in law in setting aside the disallowance u/s 14A of the I.T. Act, 1961 by relying on the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT (2010) 328 ITR 082 (Bom), wherein operation of Rule 8D was made prospective, disregarding the fact that method of working of dis-allowance provided in Rule 8D has been accepted as a reasonable method in the same judgment?

(4) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the dis-allowance u/s 40(a)(ia) without appreciating the fact that the amount of Rs.14,95,000/- represents variable cost portion of the lease of the aircraft payable by the assessee and tax at source has to be deducted on the same?

3. So far as ground nos. 1, 2 and 3 are concerned, the same is directly covered by the judgment of this Court in a case of ***M/s. Godrej & Boyce Manufacturing CO. Ltd. Vs. DCIT, reported in***

(2010) 328 ITR 82.

4. So far as ground no.4 is concerned, Mr. Suresh Kumar, learned Counsel submits that the assessee has not deducted TDS on the amount of Rs.14.90 lakhs as such provisions of Section 40(a)(ia) are correctly applied, the Tribunal committed an error in setting aside the dis-allowance.

5. The Tribunal has considered that the assessee had entered into an agreement to avail flying hours with Taj Air. The assessee has assigned these rights of flying hours to Tata Motors Ltd. The credit note was issued to the assessee for sum of Rs.14.95 lakhs towards variable costs. This credit note was issued by the Tata Motrs Ltd. towards variable costs and not in the nature of any expenses made to Taj Air. The credit note was not in the nature of expenses on which provision of TDS is applicable. The Tribunal has rightly considered the said aspect.

6. The appeal is dismissed. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**