IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1147 OF 2014

The Commissioner of Income Tax-8 Mumbai	....	Appellant
Vs.		
M/s Golden Tabacco Limited (formerly known as GTC Industries Ltd.)	....	Respondents

Mr. Arvind Pinto Advocate for the Appellant.
Mr. Jitendra Jain a/w Mr. Sameer Dalal for the Respondent.

CORAM : S.V. GANGAPURWALA AND G.S. KULKARNI, JJ.

DATE : 9 JUNE, 2017

PER COURT :

The Revenue has filed this appeal against the concurrent findings of Commissioner of Appeals and the Tribunal. The present appeal relates to Assessment Year 1999-2000. The Revenue has framed following questions as substantial questions of law :

> "A. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified

in upholding the deletion by the CIT (A) of the disallowance of proportionate interest of Rs.53,72,376/- u/s 36(1)(iii) of the Act without appreciating the fact that the assessee had failed to establish the commercial expediency of advancing Rs.2,68,61,883/-, thereby failing to substantiate the allowability of such expenditure in terms of Section 36(1)(iii) of the Act ?

B. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the deletion by the CIT(A) of the disallowance of proportionate interest of Rs.53,72,376/- u/s 36(1)(iii) of the Act on the ground that the AO had failed to show any nexus between interest bearing borrowings and interest free advances/loans, without appreciating that no such onus lies on the Assessing Officer as per the relevant Section 36(1)(iii) of the Act ?

C. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the deletion by the CIT (A) of the disallowance of proportionate interest of

Rs.53,72,376/- u/s 36(1)(iii) of the Act on the ground that the AO had failed to show any nexus between interest bearing borrowings and interest free advances/loans, without appreciating that had the money not been advanced, it would have been available to the assessee for its own business purposes and to that extent, it would not have been necessary to borrow interest bearing funds and therefore, the AO was justified in disallowing the proportionate interest u/s 36(1)(iii) of the Act as not incurred by the assessee for the purpose of its business?.

D. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the deletion by the CIT(A) of the disallowance of proportionate interest u/s 14A of Rs.65,29,778/- without appreciating the finding of the AO that proportionate interest to the extent pertaining to the assessee's investment of Rs.3,62,76,645/- in the shares of its subsidiaries/ sister companies is not allowable as per Section 14A of the Act as the income by way of dividend therefrom is exempt u/s 10(33) of the Act?

E. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the decision of the CIT (A) in restricting the addition on account of overstatement of value of opening stock for A.Y. 1999-2000 from Rs.60,29,040/- to Rs.30,94,680/- without appreciating the fact that Section 145A was applicable from A.Y. 1999-2000?

F. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the decision of the CIT (A) in restricting the addition on account of overstatement of value of opening stock for A.Y. 1999-2000 from Rs.60,29,040/- to Rs.30,94,680/-, ignoring the ratio of the decision of the Hon'ble Bombay High Court in the case of Melmould Corporation vs. CIT (202 ITR 789), the facts of which are similar to the issue under consideration?”.

2 Mr. Pinto, the learned counsel for the Appellant fairly concedes that ground Nos. (A) to (C) in the present appeal are

covered by the order of this Court dated April 21, 2017 in Income Tax Appeal No. 1222 of 2014. The said appeal was between the same parties as the parties to the present appeal.

3 As far as ground no.(D) is concerned, the learned counsel for the Appellant submits that in many of the cases, this Court has confirmed disallowance of proportionate interest under Section 14A to the extent of 2% of the exempt income. The learned counsel relies on the order dated 8th January, 2013 in Income Tax Appeal No. 934 of 2011. The learned counsel for the Respondent states that to put an end the dispute, the Respondent assessee is agreeable for disallowance of the expenditure to the extent of 10% of the total exempt income. The learned counsel submits that considering the negligible amount that would be involved, the present concession is made. As the ground No. (D) is decided on the basis of concession made by the Respondent and not on merits, certainly the same would not be a precedent.

4 The next contention with regard to the grounds (E) and (F) is that Section 145A of the Income Tax has not been properly considered. The Commissioner of Appeals and the Tribunal were not justified in restricting the additions on account of overstatement of the value of the opening stock of Assessment Year 1999-2000 from Rs.60,29,040/- to Rs.30,94,680/-.

5 It appears that the said issue is also covered by the judgment of the Division Bench of this Court in case of Commissioner of Income Tax vs. Mahalaxmi Glass Works (P) Ltd., reported in [2009] 318, I.T.R. 116 (Bombay). The opening stock was Rs.60,29,040/- and the closing stock was Rs.90,00,000/-. The Commissioner of Appeals restricted the additions on account of overstatement to the tune of Rs.30,94,680/-. The same was perfectly justifiable in view of the judgment of this court in case of Mahalaxmi Glass Works (referred supra).

6 In light of above, the Income Tax Appeal is partly allowed on the basis of the concession given by the learned counsel for the Respondent.

7 The concession given without prejudice to it's rights and contentions.

(**G.S. KULKARNI, J.**) **(S.V. GANGAPURWALA, J.)**