

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.384 OF 2015

Pr. Commissioner of Income Tax,
Central-2, Mumbai-400 020

.... Appellant

Vs.

M/s. Oricon Enterprises Ltd.

.... Respondent

Mr. A.R. Malhotra with Mr. N.A. Kazi for the Appellant.
None present for the Respondent.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : SEPTEMBER 12, 2017

P.C:

1. This appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai, dated 12-9-2014 in Income Tax Appeal No.1145/Mum/2013. The two appeals – one of the Revenue and another of the assessee for the Assessment Year 2009-10 – were disposed of by this common order.

2. The assessee is absent, though duly served. With the assistance of Mr. Malhotra, we have perused that part of the Tribunal's order which disposes of the Revenue's appeal.

3. The Revenue was aggrieved and dissatisfied with the order of the First Appellate Authority. In this case, the assessee is a company engaged in the business of manufacturing and selling of petrochemicals and trading in goods and shares, etc.. During the year under consideration, the assessee had income from business, capital gain and house property. It filed its return of income on 30-9-2009 declaring total income of Rs.10,04,46,170/-. The case was selected for scrutiny. During the assessment proceedings, the Assessing Officer noticed that the assessee has both exempt income yielding investment as well as business assets in the balance-sheet. The assessee maintains consolidated accounts. The assessee offered an amount of Rs.21,708/- under Section 14A of the Income Tax Act, 1961 ("the Act" for short) r/w Rule 8D of the Income Tax Rules, 1962 ("the Rules" for short). The Assessing Officer did not accept the allocation of expenditure and made disallowance of

Rs.1,53,19,575/- under Section 14A of the Act r/w Rule 8D and added back the same to the total income of the assessee for the year under consideration. He determined the total income at Rs.11,95,62,020/-. The order of the Assessing Officer dated 12-12-2011 was challenged by the assessee before the Commissioner of Income Tax (Appeals), who allowed that appeal and restricted the disallowance under Section 14A of the Act r/w Rule 8D to Rs.9,52,147/-.

4. Both the Revenue as also the assessee filed appeals to the Tribunal. The grievance of the Revenue is that the First Appellate Authority erred in law and on facts in deleting the addition of Rs.1,52,97,867/- made by the Assessing Officer, while in the cross-objection the ground of the assessee was that the First Appellate Authority ought to have made no disallowance and he erred in confirming the disallowance to the extent of Rs.9,52,147/-.

5. A common order has been passed by the Tribunal. It noted that the balance-sheet of the assessee reveals that the

assessee has its own funds in the form of share capital and reserves and surplus amounting to Rs.101.31 crores as against the investment of Rs.69.08 crores. This clearly shows that the assessee is having sufficient funds to make investments. These are the assessee's own funds. Further, out of the total investment of Rs.69.08 crores, Rs.66.68 crores are invested in subsidiary/associate companies. There is also loan liability of Rs.25.25 crores as on 31-3-2008 which has come down to Rs.15.61 crores as on 31-3-2009. Thus, there are no fresh borrowings during the year under consideration.

6. In the circumstances, the order of the Commissioner has not been maintained in its entirety. The Tribunal held that there is no reason for allocation of any interest expenditure towards earning of exempt income. The Tribunal, therefore, has found, on facts, that the Commissioner could not have maintained the disallowance at Rs.9,52,147/-. We do not see any reason to interfere with such finding of fact and the peculiar circumstances noted in the case of the assessee. These facts and circumstances emerge from the scrutiny of the balance-sheet.

Therefore, the finding of fact that there is no reason for allocation of interest expenditure towards earning of exempt income, cannot be termed as perverse or vitiated by any error of law apparent on the face of the record and the appeal deserves to be dismissed as far as that aspect is concerned.

7. Similarly, as far as disallowance under Rule 8D(2) of the Rules is concerned, the Tribunal has maintained that the allocation of administrative and other expenses cannot be ruled out. It has, therefore, brought down the disallowance from the figure of Rs.9,52,147/- to Rs.2,10,756/-. Thus, what we find is that in para 9.1 the Tribunal has bifurcated the disallowance. Firstly, it has found that there is no reason for allocation of interest expenditure towards earning of exempt income. However, the allocation of administrative and other expenses cannot be ruled out. That is how the disallowance, as computed by the Commissioner of Income Tax (Appeals), comes to Rs.2,10,756/-, in the opinion of the Tribunal.

8. Mr. Malhotra would submit that the disallowance is

much more and if one peruses the order of the Assessing Officer, he has worked out the net amount disallowed at Rs.1,52,97,867/-. Hence, there is a substantial tax effect and we should admit this appeal. We should not proceed on the footing that the Revenue or the tax impact is meagre and refuse to entertain the appeal, all the more when it involves substantial questions of law.

9. With the assistance Mr. Malhotra, we have perused the order of the Assessing Officer. The Assessing Officer had observed that the working of the disallowance is incorrect. He has worked out the disallowance not only by application of Section 14A of the Act but by Rule 8D of the Rules. In doing so, he has held that the assessee has both exempt income yielding investment as well as business assets in the balance-sheet. Once the assessee maintains consolidated accounts, then, the offered amount cannot be accepted. In the opinion of the Assessing Officer, the disallowance should be worked out at Rs.1,53,19,575/-. He has applied the formula of interest paid/financial cost, average of investments made and average of

assets under the Heads “A”, “B” and “C”. He has worked the disallowance by “A” and “B” taken together/C + 0.005% and for that purpose he has arrived at this figure. He has then computed the total income of the assessee and rounded it off. This working is to be found at page 16 of the paper-book.

10. The First Appellate Authority came to the conclusion that once the company has a total investment of Rs.69,08,43,639/- in shares and securities, it has its sufficient own funds. The sufficient own funds are Rs.101.31 crores, as against the investment of Rs.69.08 crores only in shares and securities. The position of capital and reserve as on 31-3-2009 was noted by the Commissioner and then he finds that the shares are held in Demat account and dividend amount is directly credited to the Bank account. No other expenses are incurred for earning the income. The dividend received is only a nominal sum of Rs.2,17,076/-. The assessee pointed out that the term loans/working capital loans taken from Bank and financial institutions, etc., are for the company's manufacturing and business activities and since the same is utilised for business, the

interest paid of Rs.2,58,19,005/- is allowable under Section 37(1)(iii) of the Act. As held by the Tribunal and agreeing with the First Appellate Authority, out of total investments major amounts are invested in shares of subsidiary/associate companies. They were acquired/allotted for consideration other than cash.

11. Therefore, no disallowance could have been made was the argument before the First Appellate Authority as well. The appellant made a without prejudice offer of Rs.21,078/- being 10% of the dividend income apportioned towards administrative expenses. Therefore, alternatively the disallowance may be restricted to Rs.2,17,076/-.

12. The Commissioner in para 7 of his order considered this stand of the assessee and held that the investments have to be construed as having been made out of the total internal accruals. The argument was termed as reasonable but in the absence of details to prove the nexus between own funds and investments, the First Appellate Authority was unable to accept

the plea especially when the company also had borrowings. Thus, when there is a mixture of both - own funds and borrowed funds, in the absence of tangible material, it is difficult to accept the plea that the investment is purely out of own funds. The investments aggregate to Rs.69,08,43,639/-. That is how the further argument that the major amounts of investments were for consideration other than cash was considered by the First Appellate Authority. Then, the details of such investments are set out on internal pages 4 and 5, running pages 28 and 29 of the order of the First Appellate Authority. The First Appellate Authority, therefore, rejected the argument that no further disallowance under Section 14A is called for. The provisions were applied and with effect from 2008-09. The First Appellate Authority worked out the disallowance in accordance with the mode prescribed in Rule 8D. Yet, on account of the discussion in para 7 of the order of the First Appellate Authority, the disallowance was worked out by taking recourse to both provisions at Rs.9,52,147/-.

13. Once the Tribunal has approached the matter on the

basis that the First Appellate Authority could have applied the provision, namely, Section 14A as also Rule 8D with effect from the Assessment Year 2008-09, but yet restricted the disallowance to Rs.2,10,756/- on facts, then, we do not think that any of the questions proposed at page 6 of the paper-book are substantial questions of law. All the more, when the tax effect was meagre. We do not think that any larger issue or wider question has been dealt with by the Tribunal nor its observations raise otherwise a substantial question of law. In the circumstances, if the matter is approached from the above angle, this appeal need not be entertained. It is dismissed. No costs.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)