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

INCOME TAX APPEAL NO. 693 OF 2015

Pr.Commissioner of Income Tax-3. ... Appellant.
V/s.
M/s.Rivian International (P) Ltd. ... Respondent.

Mr.Suresh Kumar with Ms.Priyanka Tiwari for the appellant.

Mr.Pankaj R. Toprani with Ms.Krupa Toprani for the respondent.

CORAM : A.S.OKA AND A.K.MENON, JJ.

DATE : 21st November 2017.

P.C.:

One of the contentions raised by the respondent- assessee was that in view of policy circular dated 10th December 2015, this appeal cannot be prosecuted as the disputed claim involved in the appeal is of Rs.11,80,224/-. Our attention is invited to the order dated 12th October 2017 passed by the Apex Court in Civil Appeal No.16815/2017 (Commissioner of Income Tax, Bangalore and another v. M/s.Gemini Distilleries) wherein the Apex Court has held that the Central Board of Direct Taxes has no power to issue any such circular having retrospective operation. The present appeal has been filed on 6th July 2015. In view of the aforesaid order of the Apex Court, this circular dated 10th December 2015 cannot be applied retrospectively as this appeal has been preferred before the said date.

2. The challenge in this appeal is to the judgment and order dated 10th December 2014 passed by the Income Tax Appellate Tribunal, "D" Bench, Mumbai (for short "Appellate Tribunal"). The issue pertains to the assessment year 2009-10. The respondent- assessee filed its return accompanied with Balance Sheet and P & L Account declaring loss of Rs.Nil. The Assessing Officer passed an order under which he made dis-allowance under Section 14A of the Income Tax Act, 1961 (for short "the said Act") read with Rule 8D of the Rules framed under the said Act. An appeal was preferred by the respondent- assessee before the Commissioner (Appeals). The appeal was partly allowed. However, the Commissioner (Appeals) did not interfere with the dis-allowance under Section 14A of the said Act. Accordingly, an appeal was preferred by the respondent- assessee before the Appellate Tribunal. The Appellate Tribunal followed the law laid down by the Delhi High Court in the case of ***Commissioner of Income Tax-4 v. Holcim India (P.) Ltd.***[1].

3. Therefore, the Appellate Tribunal proceeded to delete the dis-allowance made under Section 14A of the said Act. The learned counsel appearing for the appellant has pressed into service the following substantial question of law:

> "Whether, on the facts and in circumstances of the case, the Income Tax Appellate Tribunal was justified in allowing the appeal of the assessee relying on the decision of the Delhi High Court in the case of CIT v. Holcim India P.Ltd. Without appreciating the fact that the assessee had huge investments in shares, the incomes from which are exempt from tax and the applicability of

1 (2015) 57 taxmann.com 28 (Delhi) / (2014) 272 CTR 282 (Delhi).

> Rule 8D in determining the disallowable expenditure, depends on investments in such fund, which generate tax free income and not receipt of that income?"

The submission of the learned counsel appearing for the appellant is that the view taken by the Delhi High Court in case of ***Commissioner of Income Tax-4 v. Holcim India (P.) Ltd.*** (supra) is not correct. The submission is that in any case, the correctness of the view will have to be considered in this appeal which gives rise to a substantial question of law. The learned counsel appearing for the respondent supported the impugned order. Reliance is placed on the decision of the Division Bench of Allahabad High Court in the case of ***Commissioner of Income Tax v. Shivam Motors (P) Ltd.***[2].

3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On facts, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the said Act. In other words, Section 14A provides that if there is an income which does not form a part of the total income under the said Act, the expenditure which is incurred for earning the income is not an allowable deduction.

2 (2015) 230 TAXMAN 0063 (Allahabad)

Therefore, during the relevant year, if the assessee has not earned any tax-free income, the corresponding expenditure incurred cannot be taken into consideration for dis-allowance.

4. We respectfully concur with the view taken by the Delhi High Court as the said view can always be taken on fair reading of Section 14A of the said Act. A Division Bench of Allahabad High Court has also taken a similar view in the case of ***Commissioner of Income Tax v. Shivam Motors (P) Ltd.*** (supra). Hence, in our view, no fault can be found with the impugned judgment of the Appellate Tribunal whereby dis-allowance under Section 14A was ordered to be deleted. No substantial question of law arises. Appeal is, accordingly, dismissed.

(A.K.MENON, J.) (A.S.OKA, J.)