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

INCOME TAX APPEAL NO.1845 OF 2014

Hinduja Ventures Ltd. .... Appellant
Vs.
The Asst. Commr. of Income-Tax,
Mumbai – 400 020 .... Respondent

Ms Shobha Jagtiani with Mr. Varun Ohri i/by D.M. Harish & Co. for the Appellant.

Mr. Arvind Pinto for the Respondent.

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

DATE **:** SEPTEMBER 12, 2017

P.C:

1. This is an assessee's appeal. It challenges the order passed by the Income Tax Appellate Tribunal, Mumbai H-Bench in Income Tax Appeal No.1534/Mum/2012 dated 26-3-2014.

2. The counsel for the assessee would submit that the proposed questions at pages 13 & 14, paragraph 37(I) to (V),

are all substantial questions of law and arising from the Tribunal's order.

3. We have carefully perused this order of the Tribunal. The Tribunal dealt with the grounds of appeal in the memo of appeal of the assessee. The grounds of appeal challenging the order of the First Appellate Authority dated 16-12-2011 are noted at running pages 88 & 89, para 1 of the Tribunal's order. Then, in para 3 of the order under challenge, the Tribunal refers to the assessment proceedings and the finding of the Assessing Officer that the assessee had received dividend income from investment in mutual funds, amounting to Rs.9.58 crores and it was claiming exemption under Section 10(34) of the Income Tax Act, 1961 (for short, "the Act") for the said income. The assessee had also claimed exemption under Section 10(38) of the Act of Rs.1.05 crore on account of Long Term Capital Gain on transfer of shares/mutual funds. The Assessing Officer held that the company could not earn dividend without its existence and management, that investment decisions were complex and required substantial market research day-to-day analysis and

that dividend income could not be earned without incurring expenditure, that the term 'expenditure' appearing in Section 14A included direct as well as indirect expenses - administrative/managerial/financial. Then the Assessing Officer referred to a Judgment of this Court in the case of *Godrej and Boyce Mfg. Co. Ltd. vs Deputy Commissioner of Income-Tax and Another*, reported in (2010) 328 ITR 81 (Bom). He also referred to Rule 8D of the Income Tax Rules, 1962 (for short, "the Rules"). The findings of the Assessing Officer and determining the disallowance so also that of the First Appellate Authority are mentioned in great details by the Tribunal in paragraph 4. In paragraph 5 is the argument of the assessee, reiterated before us, that the Assessing Officer had no jurisdiction to apply this section and the rule, and that the Assessing Officer has not recorded his satisfaction before invoking that provision. It is that argument of the assessee's representative and to the contrary of the Department's representative which are noted in para 5 of the Tribunal's order.

4. Thereafter, in para 6, the Tribunal held as under:-

"6. We have heard the rival submissions and perused the material before us. We find that assessee had earned exempt income of Rs.10.63 Crores during the year under appeal, that it had claimed expenditure at Rs.2.10 Crores and Rs.4.32 Crores under the heads interest expenditure and administrative expenditure respectively, that it did not make any disallowance u/s.14A of the Act. We find that the AO has mentioned that as why the submission made by the assessee; with regard to addition to be made u/s.14A of the Act; was not convincing. In our opinion it is not a must that AO should specifically use the words that he is not satisfied about the claim made by the assessee. The provisions of the Act expect that AO should record his satisfaction. Recording of satisfaction can be in any form – but the basic thing is that his conclusion should show the application of mind about not agreeing with the submissions made by the assessee with regard to disallowance to be made u/s.14A. In our opinion AO had recorded the satisfaction before making disallowance. We find that the FAA had specifically asked the assessee to furnish cash flow statements so that a logical conclusion can be drawn about disallowance to be made for interest payment. It is also a fact that the assessee is having mixed funds. In these circumstances, said statement becomes very important so that a reasonable conclusion can be drawn. AR, during the course of hearing before us, had made submissions about availability of reserves share capital, profits etc. In our opinion, considering the peculiar facts and circumstances of the case, in the interest of justice, matter should be restored back to the file of the FAA to decide the issue of disallowance u/s.14A of the Act with regard to interest expenditure. He is directed to afford a reasonable opportunity of hearing to the

assessee."

5. After recording its finding and conclusion as above, and remanding the case back, we do not think that we should entertain this appeal. There is no prejudice caused for each and every aspect of the question of law, termed as substantial and proposed before us by the assessee, would be examined on remand by the authority. The remand is clear inasmuch as the entire issue of disallowance under Section 14A of the IT Act, 1961 is restored; that the issue will be considered afresh on merits and in accordance with law. Hence, we do not find any necessity to entertain this appeal.

6. At this stage, we are informed that the Tribunal delivered this order in relation to Assessment Year 2008-09. There are subsequent assessment orders in relation to which this issue again cropped up. At that time the matter was sent back to the Assessing Officer. It is the Assessing Officer who has examined the same and he is yet to pass a final order. The request of the assessee's counsel is that, instead of the matter

being remanded in this case to the First Appellate Authority, it should be remanded to the Assessing Officer so as to ensure consistency in the findings and avoiding any contrary or conflicting opinion.

7. We have been informed that the order of remand by the Tribunal and to the First Appellate Authority has not gained finality, in the sense there is no order passed by the First Appellate Authority pursuant to remand, placed on record. Mr. Pinto does not object to the matter, therefore, being sent back to the Assessing Officer.

8. Therefore, beyond modifying the ultimate direction of remand to the First Appellate Authority, we direct that the matter must go back to the Assessing Officer instead of the First Appellate Authority for the Assessment Year 2008-09 as well. The Assessing Officer must pass a fresh order on merits and in accordance with law, uninfluenced by his own order passed earlier or the First Appellate Authority or the directions/observations in para 6 of the order under appeal.

9. This appeal is disposed of with the above modification. There will be no order as to costs.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)