

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1746 OF 2014

The Commissioner of Income-Tax-8 ... **Appellant**
V/s.
M/s.Aventis Pharma Limited ... **Respondent**

.....

Mr.Arvind Pinto, Advocate for the Appellant.

Mr.Sanjiv M. Shah, Advocate for the Respondent.

....

**CORAM : S.V.GANGAPURWALA &
A.M.BADAR JJ.**

DATED : 12th July 2017.

P.C.

1 The present appeal pertains to Assessment year 2000-01. The Revenue has filed the appeal raising following grounds :

“a) Whether in the facts and circumstances of the case, the ITAT is justified in deleting the dis-allowance made u/s.14A of the Act without appreciating the fact that the Assessee company has not proved that the entire interest bearing funds were wholly and exclusively for its business purpose and only non-interest bearing funds

were utilized for the impugned investment ?

b) Whether in the facts and circumstances of the case, the ITAT is justified in deleting the dis-allowance made u/s.14A of the Act without appreciating the decision of the Hon'ble ITAT Delhi "B" Special Bench in the case of Cheminvest Limited vs. ITO (2009) 124 TTJ (del) (SB) 577 and the decision of the Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Limited. vs. DCIT, Range -10(2), Mumbai (2012) 194 Taxman 2003 ?

c) Whether in the facts and circumstances of the case, the ITAT is justified in deleting dis-allowance on account of VRS expenses holding that the same are incurred for business by incorrectly observing that manufacturing unit of Assessee at Mulund, Mumbai is still working when Assessee itself had admitted that it has stopped manufacturing unit at Mulund as mentioned para 11 of the CIT(A)'s order ?

d) Whether in the facts and circumstances of the case, the ITAT is justified in holding that the VRS expenses are incurred by the Assessee for the purpose of carrying on the business when the only purpose for these expenses is to close the manufacturing unit to facilitate sale of land

of this unit and not for any business purpose ?

e) Whether in the facts and circumstances of the case, the ITAT has erred in holding that the Assessee is entitled to expenditure incurred on VRS by relying on the order of Supreme Court in the case of K.Ravindranathan Nair (supra) and on the decision of Bombay High Court in the case of M/s.Foseco India Limited (supra) when facts of these cases are not identical to the facts of present case ?

f) Whether in the facts and circumstances of the case, the ITAT has erred in holding that VRS expenses are incurred for the purpose of business ignoring decisions of Supreme Court in the case of CIT vs. Gemini and on the decision of Madras High Court in the case of Coimbatore Premier Corporation Pvt. Ltd. 244 ITR 753 ?”

2 Mr.Pinto, the learned counsel submits that the Tribunal was not justified in deleting the dis-allowance made under Section 14A of the Act without appreciating the fact that the Assessee Company has not proved that the entire interest was wholly and exclusively for its business purpose and only non interest bearing funds were utilized for the investment. The Judgment relied by the Tribunal in this regard is erroneous. The learned Counsel further submitted that as far as VRS expenses is

concerned, the Tribunal was not justified in deleting dis-allowance on account of VRS expenses. It has incorrectly observed that the manufacturing unit of Assessee at Mulund, Mumbai is functioning, when Assessee itself had admitted that it has stopped manufacturing unit at Mulund.

3 Mr.Shah, the learned counsel for the Respondent supports the order and submits that as far as question with regard to dis-allowance under Section 14A of the Act is concerned, in the previous Assessment Order, the similar issue had arisen and the same is decided in favour of the Assessee. The learned counsel further submits that the expenses towards VRS are rightly allowed inasmuch as the factories at Ankeleshwar and other places were still functioning and operating. The learned counsel placed reliance on the Judgment of the Apex Court in the case of *Commissioner of Income-Tax v. Foseco India Ltd.* reported in [2013] 352 ITR 320 (Bom)., so also the Judgment of the Apex Court in the case of *K.Ravindranathan Nair v. Commissioner of Income-Tax*, reported in ITR Volume 247 page.178.

4 We have perused the Order passed by the Tribunal, so also have considered the submissions canvassed by the learned counsel for the respective parties.

5 As far as dis-allowance under Section14A of the Act is

concerned, the question does not subsist as in the Assessee's own case for the previous assessment year, the said aspect has been considered in favour of the Assessee and the said order has become final. As far as the expenses of VRS scheme is concerned, it has been held on fact by the Tribunal that the business of the Assessee has not closed down and the same is continuing. This Court in case of *Commissioner of Income-Tax v. Foseco India Ltd.* (referred to supra) has observed that the expenditure incurred relating to VRS scheme is available as revenue expenses.

6 In light of the above, the Appeal is bereft of any substantial question of law.

7 As such, the Appeal is dismissed.

8 No costs.

(A.M.BADAR J.)

(S.V.GANGAPURWALA J.)