THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

I.T.T.A.No. 515 of 2017

JUDGMENT: ***(Per VRS,J)***

The Revenue has come up with the above appeal under Section 260A of the Income Tax Act, 1961, raising the following two substantial questions of law:

> *"1) In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in confirming the finding of the learned Commissioner of Income Tax (Appeals) in deleting the disallowance of interest expenditure proportionate to the exempted income under Section 14A of the Income Tax Act, 1961 in the absence of any correlation of investments done by the respondent-assessee and Section 14A of the Income Tax Act, 1961 mandate disallowance of expenditure incurred in relation to exempted income? And*
>
> *2) In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is justified in not independently adjusting the disallowance of interest of Rs.60.95 lakhs made under Section 14A of the Income Tax Act, 1961 for the assessment year 2010-2011, keeping in view of sub-sections (2) and (3) of Section 14A of the Income Tax Act, 1961, instead of affirming the view taken by the learned Commissioner of Income Tax (Appeals) who has concurred with the submission of the respondent-assessee that the investment was made purely for business purpose?"*

2. Heard Mr. B. Narasimha Sarma, learned senior standing counsel for the Income Tax Department, appearing for the appellant.

3. The respondent-assessee is in the business of manufacture of Petrochemicals. In the course of scrutiny assessment, the Assessing Officer disallowed the proportionate interest expenditure, by invoking Section 14A, on the ground that the investment made by the assessee

in the equity shares of another Company, by name, Andhra Pradesh Gas Power Corporation Limited, brought dividends, which was exempt from tax. However, the Commissioner of Income Tax (Appeals) reversed the order of the Assessing Officer, on the ground that the investment cannot be treated as having been made for business purposes. The investment in the equity shares was also held to have been made not out of borrowed funds. Therefore, the Assessing Officer was directed by the appellate Commissioner to delete the addition.

4. The appeal preferred by the Revenue to the Income Tax Appellate Tribunal was dismissed, forcing the Revenue to come up with the above second appeal.

5. It is seen from the order of the Commissioner of Income Tax (Appeals) that the Commissioner recorded a factual finding that the investment made by the assessee was for the purpose of obtaining electricity at a lower cost. The electricity was intended to be utilized for the assssee's business. In other words, there was a clear finding that the investment was for the purpose of business and not for the purpose of earning any dividend income or exempt income. There was also a finding that the investment was not made out of borrowed funds.

6. In the light of those factual findings, the Tribunal affirmed the order of the Commissioner of Income Tax (Appeals). In such

circumstances, we do not think the questions of law raised by the Revenue arise for consideration in this case as the findings of fact, are unassailable. Therefore, the appeal is dismissed.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

T. RAJANI, J.

21st August, 2017
cbs

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+I.T.T.A.No. 515 of 2017

% 21-08-2017

Principal Commissioner of Income Tax,
Rajahmundry .. Appellant

Vs.

$ M/s. The Andhra Petro Chemicals Limited,
Tanuku, A.P. .. Respondent

<GIST:

>HEAD NOTE:

! Counsel for appellant : Mr. B. Narasimha Sarma,
senior standing counsel for Income
Tax Department

^ Counsel for respondent : None

? CASES REFERRED : ----