IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL No. 32 OF 2018

EDC Limited,
Through its Managing Director,
Mr. Surendra Vishnu Vernekar,
Having its office at EDC House,
Dr. A. B. Road, Panaji, Goa – 403 001 … Appellant.

Versus

The Commissioner of Income Tax,
Having office at Aayakar Bhawan,
1st Floor, 5 EDC Complex, Patto
Plaza, Panaj-Goa. … Respondent.

Mr. Jitendra Jain, Mr. Gaurang Panandiker and Mr. Gajanan E. Dukle, Advocates for the Appellants.

Mr. K. Aravind, Standing Counsel for the Respondent.

Coram : N. M. Jamdar,
Prithviraj K. Chavan, JJ.

Date : 9 April 2018.

ORAL JUDGMENT: (Per. N. M. Jamdar, J)

Heard Mr. Jitendra Jain, learned Advocate for the Petitioner and Mr. K. Aravind, learned Standing Counsel for the

Respondent.

2. Admit, on the following question of law:

> *'Whether the decision of the Income Tax Appellate Tribunal dated 8 September 2017 in the Income Tax Appeal No. 59 of 2017 needs to be set aside in view of the decision of the Special Bench in the case of Assistant Commissioner of Income-tax, Circle 17(1), New Delhi v. Vireet Investment (P.) Ltd.[1] in IT Appeal No. 502 (Delhi) of 2012.'*

3. Taken up for disposal forthwith by consent.

4. By this Appeal, the Appellant Assessee has challenged the order passed by the Income Tax Appellate Tribunal, Panaji in Income Tax Appeal No. 59 of 2017 . The Appeal pertains to the assessment year 2011-12. The Appellant earned dividend income of Rs.18,91,277/-. According to the Appellant he did not incur any expenditure to earn dividend, but by itself disallowed the same under Section 14A of the Income Tax Act read with section 8D(2)(iii) at 0.5% average investment. The Assessing Officer passed an order under Section 143(3) of the Income Tax Act assessing income at Rs.16,46,24,357/-/-. The Assessing Officer computed disallowance under Section 8D(2)(ii) at Rs. 50,98,033/- and under Section 8D(2)(iii) Rs. 16,53,284/- . The Appellant challenged the assessment by

1 [2017]82 taxmann.com 415 (Delhi -Trib.) SB

filing an appeal to the Commissioner of Income Tax (Appeals). The appeal was dismissed by order dated 28 December 2016 and further appeal filed before the Tribunal was dismissed by the impugned Judgment and Order.

5. Mr. Jain, the learned Counsel for the Appellant, inter alia, contended that the Tribunal has misinterpreted the concerned Rule 8(D) and Section 14A of the Income Tax Act, and placed on record the Judgment and Order passed by the Special Bench of Income Tax Appellate Tribunal, Delhi in the case of *Assistant Commissioner of Income-tax, Circle 17(1), New Delhi v. Vireet Investment (P.) Ltd. in IT Appeal No. 502 (Delhi) of 2012.* The learned Counsel for the Appellant submitted that the decision of the Special Bench was delivered on 16 June 2017 on the same day when the Judgment and Order was reserved by the Income Tax Appellate Authority, Panaji. Learned Counsel for the Appellant submitted that the Judgment and Order was pronounced by the Income Tax Appellate Tribunal, Panaji on 8 September 2017 without considering the decision of the Special Bench. He submitted that the decision of the Special Bench is binding on the Tribunal. The learned Standing Counsel for the Respondent submitted that the view taken by the Income Tax Appellate Authority, Panaji, is correct.

6. The Tribunal, before it pronounced its decision could have considered the decision of the Special Bench on the very legal issue. We are not opining whether it was appropriate or otherwise for the Tribunal to pronounce the decision without considering the decision of the Special Bench delivered in the meanwhile, as it may have been that its attention was not drawn to it. There is no doubt that the decision of the Special Bench is directly relevant to the controversy at hand. Mr. Aravind, the learned Standing Counsel sought to contend that facts will have to be examined before applying the decision of the Special Bench. In these circumstances, we are of the opinion that the Income Tax Appellate Tribunal should reconsider the issue after taking note of the decision of the Special Bench in the case of *Assistant Commissioner of Income-tax, Circle 17(1), New Delhi v. Vireet Investment (P.) Ltd. in IT Appeal No. 502 (Delhi) of 2012.* Accordingly, the question of law as framed is answered as above.

7. The Appeal is allowed. The Judgment and Order passed by the Income Tax Appellate Tribunal dated 8 September 2017 is quashed and set aside. The Appeal no. 59 of 2017 stands restored to the file of the Income Tax Appellate Tribunal, Panaji. The Tribunal

will decide the Appeal after taking into consideration the decision of the Special Bench in IT Appeal No. 502 (Delhi) of 2012, on its own merits. No costs.

Prithviraj K. Chavan , J. ***N.M. Jamdar, J.***