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

INCOME TAX APPEAL NO. 846 OF 2016

Pr. Commissioner of Income Tax-12
Mumbai .. Appellant

v/s.

Business Match Services (I) Pvt. Ltd. .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Jitendra Jain a/w Mr. Viraj Bhate I/b PDS Legal for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 19.08.2015.

2. Following questions were urged before us for consideration:-

(i) Whether on the facts and in circumstances of the case and in law, the Tribunal was justified in holding that the transaction in the shares of Balaji Telefilms of Rs.3.07 crores as short term capital gains; ignoring the finding of the lower authorities that the volume, frequency and pattern of trading is indicative of a

trading transaction, with a view to earn short term profits?

(ii) Whether on the facts and in circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to restrict dis-allowance u/s 14A to the amount disallowed by the Company; ignoring the decision of the jurisdictional High Court in Godrej & Boyce Vs. DCIT (194 Taxman 203) wherein it was held that the provisions of Rule 8D are applicable for and from AY 2008-09?

3. Question no. (i) relates to the issue whether the assessee's transactions of sale of shares were in the nature of business or investment. The Revenue would obviously contend that the same was the assessee's business activity and, therefore, the income from sale of shares, would invite tax accordingly. The assessee contended all along that the sale of shares would invite capital gain, long term or short term, as the case may be.

4. In Appeal No.699 of 2016 concerning the earlier assessment year, in case of this very assessee, we had examined the same in following manner.

"From the material on record, and with the assistance of learned Counsel for the parties, we notice that in the earlier year also,

Assessee had claimed capital gain out of its sale of shares. Same was accepted by the Assessing Officer.

3. Further, in the present case, the Tribunal noted that the dispute pertains only to one scrip – namely – the shares of M/s. Adani Enterprise Ltd. - Assessee had purchased the shares in installments and after holding them for sometime, sold them also in installments. Thus, there were no instances of repetitive purchase and sale of shares. From the balance sheet, it could be gathered that the Assessee had used its own funds or interest free funds, borrowed from the Directors of the Company in order to purchase the shares. The Assessee had taken physical delivery of the shares and in the books of account, treated the same as an investment.

4. Inter alia, on said grounds, Tribunal had ruled in favour of the Assessee. Whether the purchase and sale of shares is in the nature of investment or business venture, would depend on facts and circumstances of each case. There are judicially laid down guidelines and parameters to judge whether in a case, the sale of shares would give rise to business income or capital gain. Nevertheless, essentially such question is a mixed question of law and facts. In the present case, the Tribunal has applied the correct parameters to the admitted the facts, emerging from the record. We do not find any error in such consideration. No question, therefore, arises for our consideration."

5. In view of the above, question no.(i) is not entertained.

6. Second question relates to dis-allowance under Section 14A of the Act. The assessee had dis-allowed suo-moto a sum of Rs.2.07 lakhs under the said provision towards its investment in shares. The Assessing Officer, however applied Rule 8D of the Income Tax Rules and computed the dis-allowance at Rs.13.57 lakhs (rounded off). The Tribunal noted the facts emerging from the record. It was found that the major expenses totalling at Rs.13.57 lakhs (rounded off) comprised of administrative expenses, breakup of which was produced on record. The Tribunal noted that part of administrative expenses were travelling expenses, brokerage etc. These expenses had no direct connection to the assessee's investment in shares. The Tribunal, therefore, accepted the assessee's computation at Rs.2,07,022/- for the purposes of Section 14A of the Act. The Tribunal noted that application of Rule 8D in the present case would work out to a disproportionately high figure of Rs.13,57,011/- which was not justified. The entire issue is thus fact based. The Tribunal found that the dis-allowance of Rs. 2,07,022/- made by the assessee was correct. In other words, the occasion to apply Rule 8D by rejecting the assessee's working out of the dis-allowance did not arise at all. No question of law arises.

7. The tax appeal is, therefore, dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**