IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1230 OF 2015

The Pr. Commissioner of Income
Tax-3, Mumbai ....Appellant
V/s.
M/s. Videocon Industries Ltd. ....Respondent

* * * * *

Mr. Suresh Kumar, Advocate for the appellant.

CORAM :- M.S. SANKLECHA, &
SANDEEP K. SHINDE, JJ.

DATE :- 6TH MARCH, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 6^{th} February, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 6^{th} February, 2015 is in respect of Assessment Year 2008-09.

2. Revenue urges the following question of law, for our consideration:

"(i) Whether on the facts and in the circumstance of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in law in deleting the dis-allowance of Rs.12,61,00,030/- by holding that the assessee has own interest free funds available more than the investment made in tax free securities, without appreciating the fact that as per Section 14A of the I.T. Act, the relation has to be seen between the exempt income and the expenditure incurred in relation to it and not vice versa ?"

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in deleting the dis-allowance of Rs.12,61,00,030/- relying on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd without appreciating the fact that the decision is in the context of dis-allowance of interest expenditure u/s. 36(1)(iii) of the Act and has no t direct application for a dis-allowance u/s. 14A ?

(iii) Whether on the facts and circumstances of the case and in law, the

Hon'ble Income Tax Appellate Tribunal was justified in restoring back the issue of dis-allowance of Rs.1,92,02,842/- to the file of the AO for re-adjudication without appreciating the fact that the assessee did not maintain any separate account of its investment and relied on ad-hoc estimation and the Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd., has held that some reasonable basis for allocating the expenditure has to be worked out and not on adhoc estimation basis ?

(iv) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in deleting the dis-allowance u/s. 14A made to Book Profit amounting to Rs.14,55,02,872/- without appreciating the fact that the amount disallowable u/s. 14A is covered under clause (f) of Explanation (1) to section 115JB(2) of the Act and shall be added to the book profit and the issue is squarely covered in favour of the Department in the judgment of Hon'ble ITAT, Mumbai in the case of M/s. RBK Share Broking Pvt. Ltd.?”

REGARDING QUESTIONS NO.1 AND 2 :-

3. Mr. Suresh Kumar, the Learned Counsel appearing for the Revenue very fairly states the issues raised herein stands concluded against the Revenue and in favour of the respondent, assessee by the decision of this Court in **Commissioner of Income Tax V/s. HDFC Bank Ltd. 366 ITR 505**. Infact, we note that the impugned order of the Tribunal has placed reliance upon the decision of this Court in *HDFC Bank Ltd* (supra) to allow the respondent-assessee's Appeal. In the above view, questions no.1 and 2 do not give rise to any substantial question of law. Thus, the same cannot be entertained.

REGARDING QUESTION NO.3 :

4. The impugned order of the Tribunal has restored the issue to the Assessing Officer to re-adjudicate the entire issue of Section 14A of the Act to the Assessing Officer in accordance with the provisions of law after following the principles of natural justice. The remand is without any specific directions. Thus, the question as proposed at this stage, do not give rise to any substantial question of law. Thus,

the same cannot be entertained.

REGARDING QUESTION NO.4 :-

6. The impugned order of the Tribunal has held that for the purpose of computing book profits, the Assessing Officer would include the amount of dis-allowance. However, as the issue of amount of dis-allowance under Section 14A of the Act has been restored to the Assessing Officer, this issue is also consequential to the quantum determined by the Assessing Officer while considering the dis-allowance. In the above view, Question no.4 does not give rise to any substantial question of law. Thus, the same cannot be entertained.

7. In view of the above, the Appeal is dismissed.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**