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

INCOME TAX APPEAL NO. 185 of 2016

The Pr. Commissioner of Income Tax-15 .. Appellant

v/s.

M/s. Aarti Industries Ltd. ..Respondent

Mr. Suresh Kumar for the appellant
Mr. Rahul Hakani for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 11th JULY, 2018.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th February, 2015 of the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2007-08.

2. The Revenue has urged the following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in allowing the claim of the assessee in respect of weighed deduction under section 35(2AB) of the Act in absence of agreement with the prescribed authority?

Uday Shivaji Jagtap Digitally signed by Uday Shivaji Jagtap Date: 2018.07.13 17:47:29 +0530

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in restricting the disallowance to the extent of 2% of the dividend income, when the assessee failed to submit any documentary evidence to substantiate its claim and establish the nexus between the interest free fund and investment?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in deleting the addition of .05% of average amount of investment to work out administrative cost?

3. <u>Regarding question no.(i) :-</u>

(a) Mr. Suresh Kumar, learned Counsel appearing for the Revenue in support of the appeal very fairly states that this issue was the subject matter of consideration by the Tribunal in respect of the assessee's appeal for Assessment Years 2001-02 and 2002-03. The impugned order has followed the above orders, to allow the respondent assessee's appeal on this issue.

(b) Mr. Suresh Kumar, learned Counsel for the Revenue states that the Revenue had preferred appeal on this issue in respect of Assessment Year 2001-02 from the order of the Tribunal to this Court, being Income Tax Appeal No.166 of 2013 (Commissioner of Income Tax Vs. Aarti

Industries) and Income Tax Appeal (L) No. 1285 of 2012 for Assessment Year 2002-03 (Commissioner of Income Tax Vs. Aarti Industries). Both the above appeals were rejected on 24th January, 2013 as not giving rise to any substantial question of law. Mr. Suresh Kumar very fairly states that there is no difference in facts and in law in the subject assessment year on this issue to that existing in Assessment Years 2001-02 and 2002-03. Thus, there is no basis to take different view in the subject assessment year.

(c) In the above view, this question does not give rise to any substantial question of law for the reasons indicated in our order dated 24th January, 2013 in Income Tax Appeal (L) No.1285 of 2012. Thus, this question is not entertained.

4. **<u>Regarding question no.(ii) :-</u>**

(a) The impugned order of the Tribunal upheld the dis-allowance under Section 14A of the Act made by the respondent assessee on reasonable basis at 2% of the exempted income i.e. dividend income.

(b) As held by this Court in ***Godrej & Boyce Mfg. Co.Ltd. Vs. DCIT, 320 ITR 81*** and approved by the Apex Court in ***Commissioner of Income Tax Vs. Essar Teleholdings Ltd. 401 ITR 445***, Rule 8D of the Income Tax Rules, 1961 is prospective only with effect from the assessment year 2008-09. Thus, as held by this Court in Godrej & Boyce Mfg. Co. Ltd. (supra), prior to Assessment Year 2008-09 the disallowance expenses on exempt income earned under Section 14A of the Act was on a reasonable basis. Nothing has been shown to us which would even remotely suggest that the dis-allowance of 2% on the exempted income is not reasonable. Therefore, in the facts and circumstances of the case, this question is not entertained as it does not give rise to any substantial question of law.

5. Regarding question no.(iii) :-

(a) This question is consequential to question no.(ii) above. Rule 8D of the Income Tax Rules is not applicable for the subject assessment year. Therefore, separate dis-allowance on account of administrative cost is not called for.

(b) Thus, this question does not give rise to any substantial question of law. Thus, not entertained.

6. The appeal is dismissed. No order as to costs.

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