Sharayu Khot.

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

INCOME TAX APPEAL NO. 356 OF 2015

Commissioner of Income Tax **...Appellant**

Versus

Grasim Industries Ltd **...Respondent**

Mr. Suresh Kumar, a/w Ms. Samiksha Kanani, for the Appellant.

Mr. J.D. Mistri, Senior Counsel, a/w Mr. Madhur Agrawal, i/by Mr. Atul Jasani, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 9 January 2018

ORDER :

1. This Appeal under Section 260A of the Income Tax Act, 1961 ("***the Act***" for short) challenges the order dated 9 June 2014 passed by the Income Tax Appellate Tribunal

("***Tribunal***" for short). This Appeal relates to the assessment year 2006-07.

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

1. Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that Rule 8D of the Income Tax Rules ("***the Rules***" for short) is not applicable while applying the provisions of Section 14A of the Act in respect of the expenses relating to earning of exempt income?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the disallowance of interest of Rs. 43,76,918/- when the investment had gone up substantially in the course of the year?

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in restricting the disallowane of indirect expense to 2% of exempt income when decision relating to huge investments involve the top management and not a fews employees only?

3. **Re. Question 1**:-

(a) It is an undisputed position before us that this Court in ***Godrej And Boyce Mfg.Co.Ltd. Vs. Deputy Commissioner of Income-Tax & Anr.***[1] has held that Rule 8D of the Rules is not retrospective and would have no application in respect of assessments prior to assessment year 2008-09. The assessment year in this Appeal is assessment year 2006-07. Thus Rule 8D of the Rules would have no application. Consequently, no fault can be found with the impugned order dated 9 June 2014 of the Tribunal on the above account.

1 ***[2010]328 ITR 81 (Bom.)***

(b) In view of the fact that the issue stands concluded by the decision of this Court in ***Godrej And Boyce Mfg.Co.Ltd.*** (supra). Question No. 1 herein does not give rise to any substantial question of law. Thus, not entertained.

4. **Re. Question 2**:-

(a) The impugned order of the Tribunal allowed the Respondent-Assessee's Appeal before it by deleting the disallowance of interest expenditure aggregating Rs. 43.76 Lakhs under Section 14A of the Act. This on a finding of fact that the Respondent-Assessee was possessed of its own interest free funds sufficient to cover the investments made which gave rise to exempted income. This Court in ***CIT Vs. HDFC Bank Ltd.***[2] has held in the context of Section 14A of the Act where the authorities have found on facts that the Assessee's own funds (including non-interest bearing funds) are more than the investments which give rise to exempted income, it is to be presumed that the investment have been made with the interest

2 ***[2014] 366 ITR 505 (Bom.)***

free funds. Consequently, there can be no occasion to disallow interest expenditure incurred by the Respondent.

(b) Question No. 2 does not give rise to any substantial question of law, as it stands concluded in the decision of this Court in ***CIT Vs. HDFC Bank Ltd.*** (supra). Therefore, not entertained.

5. **Re. Question 3**:-

(a) The impugned order dated 9 June 2014 of the Tribunal deleted the disallowance of Rs. 1.83 Lakhs on account of indirect expenses made under Section 14A of the Act on application of Rule 8D of the Rules by the Assessing Officer and CIT(A). This for the reason that Rule 8D of the Rules is not applicable for assessment year 2006-07, as held by this Court in ***Godrej And Boyce Mfg.Co.Ltd.*** (supra). Therefore, for the assessment year 2006-07 disallowance under Section 14A has to be determined on a reasonable basis on account of indirect expenses incurred in earning exempt income under Section 14A of the Act.

(b) Thus, for the subject assessment year 2006-07 the Tribunal in accordance with the decision of this Court in ***Godrej And Boyce Mfg.Co.Ltd.*** (supra) deleted the disallowance under Section 14A of the Act on a reasonable basis i.e. at two percent of exempted income. The Revenue is unable to show as to why the two percent disallowance of the exempted income is not a reasonable disallowance made on account of indirect expenses incurred to earn exempt income.

(c) In above view, question 3 also does not give rise to any substantial question of law. Thus, not entertained.

6. Accordingly, Appeal dismissed**.** No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**