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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 441/2018 & CM APPLN 14356/2018

+ ITA 446/2018 & CM APPLN 14361/2018

+ ITA 453/2018 & CM APPLN.14406/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 2
..... Appellant

Through Mr.Zoheb Hossain, Sr. Standing
Counsel.

versus

M/S LIQUID INVESTMENT AND TRADING CO. P LTD.

..... Respondent
Through Ms.Kavita Jha and Mr.Vaibhav
Kulkarni, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **13.04.2018**

The Revenue in these appeals questions the decision of the ITAT with respect to the disallowance under Section 14A of the Income Act for the Assessment Year (A.Y.) 2001-02. It is urged that even after remand and the adverse finding by the Assessing Officer (A.O.), which was interfered with by the CIT(A), the ITAT proceeded on the assumption that non-interest bearing funds were used to derive exempt income. Learned counsel sought to rely upon a statement

made during the course of the proceedings by the assessee, prior to the remand before the A.O., to suggest that the assessee had admitted to having utilized the borrowed funds towards investments; this investment is exempted. The ITAT was of the opinion that the funds deployed were mixed in nature having character of both and accordingly, confirmed the CIT(A)'s findings.

This Court is of the opinion that the findings of the Revenue Authorities are essentially on facts. The admission that the Revenue seeks to rely upon in this appeal has to be read in the context that it was a submission; the latter part of which suggested that the funds were more of a mixed character. Furthermore, the assessee has urged concededly that the expenditure of that character – towards loan servicing, has consistently been allowed as a permissible reduction for all previous years. Taking this into account and the circumstance that the losses reported by the assessee were in fact not disputed by the A.O. in both the original and the remand proceedings and furthermore, that the total income was assessed (i.e. ₹1.33 crores) for the concerned A.Y. In the given year the lion's share of the total income of the assessee i.e. ₹90 lakhs arose only out of the disallowance – arrived at purely on the hypothetical assumption that the borrowed funds were deployed. The court is of the opinion that no question of law arises.

In I.T.A 453/2018 it is urged that the assessee had invested ₹88 crores, i.e. much more than the tax free fund available with it (₹35 crores), however, keeping this in mind the ITAT remitted the

matter for reconsideration by the CIT(A). The Revenue's grievance is with respect to the passing of the observation which is characterised as adverse.

Having heard the counsel for the parties (since the assessee's counsel was present on advance notice), the court is of the opinion that the purpose of the remand was to work out the exact figures; in these circumstances, the observation in para 17 cannot be deemed conclusive. However, all the rights and contentions of the parties in this regard are reserved. The ITAT's order is accordingly modified to this extent.

ITA 446/2018 is accordingly dismissed and ITA 441/2018 and 453/2018 are accordingly disposed of in the light of the above observations.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 13, 2018

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