R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1240 OF 2016

Pr. Commissioner of Income Tax -3, Mumbai .. Appellant

Versus

M/s. Export Import Bank of India .. Respondent

....

- Mr. Sham Walve for the Appellant
- Ms. A. Vissanji a/w Mr. Shrihari Iyer for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 11, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration:

> “(i) Whether on facts and in the circumstances of the case and in law, the Tribunal was justified in restricting the exemption u/S. 10(23G) at Rs. 7,49,79,538/- as against at Rs. 17,80,83,520/- without appreciating the fact that it cannot be allowed on gross basis and that the cost of interest on fund borrowed for funding its client should be reduced thereby to allow the exemption on net basis only?
>
> (ii) Whether on facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the

exemption claimed at Rs. 2,13,03,240/ u/s. 10(34) of the Act without appreciating the fact that what is exempt u/s. 10(34) is only an income and not the gross receipt and therefore, expenses incurred for earning such exempt income has to be deducted from the gross divident earned?

(iii) Whether on facts and in the circumstances of the case and in law, the Tribunal was justified in allowing penal interest and interest on non-performing assets (NPA) up to 31.3.1999 without appreciating the fact that the provisions of Section 43D are applicable on the facts of the case and also decision of Hon. Supreme Court in the case of UCO Bank Ltd Vs. CIT [237 ITR 889] is also directly applicable on the facts of this case?

(iv) Whether, on facts in the circumstances of the case and in law, the Tribual was justified in upholding the decision of the Ld. CIT(A) in allowing depreciating of Rs. 6,82,99,443/- by adopting WDV of AY 1999-2000?"

2. First three questions had come up before us in Income Tax Appeal No. 1090 of 2014 and connected appeals in case of this very assessee where by a detail order, we have rejected the Revenue's appeal. Without recording separate reasons, these questions are not considered.

3. The sole surviving question relates to the assessee's claim of depreciation. The income of the assessee in the earlier assessment years was not taxable. The assessee had therefore not claimed depreciation on its assets. In the current year, the assessee claimed depreciation with full value of acquisition. The Revenue argued that such depreciation would be available on notional written down value. The CIT(A) held that the depreciation was neither claimed nor granted in the earlier years and therefore, the assessee would receive depreciation on the full value. The Tribunal in further appeal by the Revenue noted that similar question had arisen in the earlier years in which the Revenue had not challenged the order of the CIT(A). On the ground of consistency, therefore the Tribunal did not entertain such a question.

4. We find that in the earlier year, not on low tax effect but consciously the Revenue had accepted the view point of CIT(A). Without there being any material change in law or facts, the Tribunal correctly did not permitted the Revenue to agitate such a question in current year.

5. In view of the above, the appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**