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

INCOME TAX APPEAL NO.1374 OF 2016

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

V/s.

M/s SICOM Limited … Respondent

Mr.Sham Walve for the Appellant.
Mr.Hiten Chande i/by M/s PDS Legal for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 22, 2019.

P.C.:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 5th August, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This Appeal relates to Assessment Year 2008-09.

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

> "Whether on the facts and in the circumstances of the case and in law the Tribunal has erred in deleting the diallowance on account of

> proportionate interest of Rs.7,87,70,940/- u/s 14A r.w.r. 8d(2) (ii) without considering the fact that the amount of disallowance u/s 14A has to be computed as per Rule 8D of the Income Tax Rules, 1961?"

3. The respondent-assessee is a non-banking finance company. In its return of income for the Assessment Year 2008-09 the respondent claimed an income of Rs.52.40 lakhs as exempt dividend income and made a suo-moto diallowance of Rs.52,934/- being the expenditure incurred for earning exempt income. However, in the assessment proceedings the Assessing Officer held that the subject Assessment Year 2008-09 the disallowance of expenditure to earn exempt income has to be made under Section 14-A of the Act r/w Section 8D(2)(ii) of the said Rules. Thus, making disallowance of expenditure to the extent of Rs.8.39 crores in the aggregate inter-alia consisting of proportionate disallowance of interest paid to the extent of Rs.7.87 crores in the Assessment Order dated 26th November, 2010.

4. Being aggrieved with the Assessment Order dated 26th November, 2010 to the extent of disallowance of proportionate

interest paid of Rs.7.87 crores, the respondent preferred an appeal to the Commissioner of Income Tax (Appeals)(CIT(A). By an order dated 20th December, 2011 the CIT(A) deleted the disallowance made under Section 14A of the Act on account of the proportionate interest paid on borrowed funds to the extent of Rs.7.87 crores.

5. Being aggrieved with the order of the CIT (A) on the above account, the revenue filed an appeal before the Tribunal. The impugned order of the Tribunal on facts found that the investments made in shares which resulted in exempt income was out of its own funds and not out of borrowed funds. The impugned order of the Tribunal upheld the reliance by the CIT(A) upon the decision of this Court in case of **CIT v/s Reliance Utilities and Power Ltd.**[1],to delete the addition made by the Assessing Officer. This is in the above case, this Court held that where funds available are both interest-free and interest-bearing then presumption is that investment in shares would be out of interest-free funds. Thus, dismissed the revenue's appeal.

1 313 ITR 340 (Bom.)

6. We find that on facts both the CIT (A) as well as Tribunal have rendered a concurrent finding that the investment made in shares which gave rise to exempt income was made out of its own funds and not out of borrowed funds i.e. interest bearing funds. In such a case this Court in **CIT Vs. HDFC bank**[1] has in identical circumstances held that the principle laid down in **Reliance Utilities and Power Ltd.(supra)** would equally apply while computing the disallowance under Section 14A of the Act. Thus, no fault can be found with the impugned order dated 5th August, 2015 of the Tribunal.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, no entertained.

8. Accordingly, tax appeal is dismissed. No order as to costs.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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