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

INCOME TAX APPEAL NO. 1564 OF 2016

Commissioner of Income Tax-LTU .. Appellant

v/s.
M/s. Asian Paints Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Madhur Agarwal I/b Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 6th FEBRUARY, 2019

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 20th November, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2008-09.

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

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the disallowance of Rs.5,37,83,155/- made by the Assessing Officer on expenditure on "Corporate Brand" building, treating such expenditure as revenue in nature ?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified inj deleting the adjustment of Rs.2,11,38,000/- made by the Assessing Officer / TPO on account of guarantee commission chargeable to its Associate Enterprises?

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting addition of Rs.1,10,72,191/- being disallowance made u/s 14A r/w Rule 8D, without giving the AO opportunity to remove any defect, if at all caused by non-mention of the satisfaction. Any such requirement was wrongly read by the Tribunal ?

3. Regarding question nos. (a) and (b) :-

(a) It is an agreed position between the parties that these two questions were subject matter of consideration by the Tribunal in respect of the same respondent assessee for Assessment Year 2006-07. The Tribunal by its order dated 29th October, 2013 relating to Assessment Year 2006-07 had decided both the issues in favour of the respondent assessee.

(b) Mr. Tejveer Singh, learned Counsel for the Revenue very fairly states that being aggrieved by order dated 29th October, 2013, the Revenue had filed an appeal to this Court being Income Tax Appeal No. 775 of 2014. The above appeal was dismissed on 24th October, 2016 on both these issues as not giving rise to any substantial questions of law.

(c) The Revenue is not been able to point out any distinguishing features in this assessment year which would warrant to take a different view from that taken in order dated 24th October, 2016 by this Court on identical issues.

(d) In the above view, for the reasons indicated in our order dated 24th October, 2016, the questions as proposed do not give rise to any substantial question of law. Thus, not entertained.

4. Regarding question no.(c) :-

(a) In its return of income, the respondent made a suo-moto disallowance of Rs.15.21 lakhs being the expenditure incurred to earn exempt income under Section 14A of the Act. The Assessing Officer disregarded the same and proceeded to disallow an amount of Rs.1.10 crores under Section 14A of the Act read with Rule 8D of the Rules as expenditure incurred to earn exempt income. Thus, adding Rs.1.10 crores to the income of the respondent.

(b) Being aggrieved, the respondent filed an appeal to the CIT(A) but without success.

(c) On further appeal, the impugned order of the Tribunal while allowing the appeal held that before invoking the provisions of Rule 8D of the Income Tax Rules, the Assessing Officer has to record his non-satisfaction with the *suo moto* disallowance of expenditure made towards earning exempt income by the respondent. This exercise not having been carried out by the Assessing Officer before applying Rule 8D of the Income Tax Rules, the disallowance of expenditure to earn exempt income cannot be sustained.

(d) This issue is no longer *res integra* as the Apex Court in ***Gorej & Boyce Mfg. Co. Ltd. Vs. Dy. CIT, 394 ITR 449*** decided the issue in favour of the respondent. In the above case, the Supreme Court has while considering the issue of disallowing of expenditure incurred to earn exempt income observed as under :-

> *"Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14A (2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."*

Thus, Rule 8D of the Rules cannot be invoked where the *suo* *moto* disallowance made by the respondent assessee is not found to be satisfactory by the Assessing Officer having regard to the accounts of the assessee. In the absence of recording the aforesaid fact of non-satisfaction in terms of Section 14A(2) of the Act, invocation of Rule 8D is not permissible.

(e) Therefore, in view of the above decision of the Apex Court, this question also does not give rise to any substantial question of law. Thus, not entertained.

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

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