

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

INCOME TAX APPEAL NO.436 OF 2017

Pr.Commissioner of Income-Tax-7

... Appellant

V/s.

Premier Finance & Trading Co. Ltd.

... Respondent

Mr.Suresh Kumar for the Appellant.

Mr.Jay Bhansali for the Respondent.

**CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.**

DATE : MARCH 6, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal. Following questions were pressed at the time of arguments:-

“(1) Whether on the facts and circumstances of the case and in law, the ITAT was correct in dismissing the revenue's appeal in respect of the addition of Rs.50 lakhs made u/s 36(1)(iii) on account of advance share application money given by the assessee to its sister concerns without properly appreciating the factual and legal matrix of the case?

(2) Whether on the facts and circumstances of the case and in law, the ITAT was correct in dismissing the revenue's appeal in respect of the addition of

Rs.3,05,50,685/- u/s 37(1) on account of interest free advances without appreciating that the addition was not made on the notional basis on the loans advanced but has restricted the interest expenses to the extent of interest foregone and thus, the CIT (A) and the ITAT has ignored the facts of the case to the extent of perversity?

(3) Whether on the facts and circumstances of the case and in law, the ITAT was correct in reversing the order of the CIT(A) in respect of the disallowance of Rs.2,33,36,058/- u/s 14A read with Rule 8D without appreciating the factual and legal matrix of the case wherein working of the disallowance was submitted by the assessee itself and on similar lines in immediately succeeding Assessment Year 2009-10, disallowance of Rs.5,27,15,811/- was suo moto offered by the assessee and accepted by the Assessing Officer.

2. Respondent-assessee is a limited company. Issues relate to the assessment year 2008-09. First question relates to that decision of the Assessing Officer to make an addition of Rs.50 lakhs by referring to Section 36(1)(iii) of the Income Tax Act, 1961 ("the Act" for short) towards advance share application money provided by the assessee to its sister concern. CIT (Appeals) and the Tribunal held that the Assessing Officer had made a wrong reference to a similar treatment given by him for the earlier assessment year 2007-08. It was found that in the said assessment year 2007-08 there was no scrutiny assessment.

Thus, the entire basis of the order of the Assessing Officer was knocked down. Quite apart, it was found that the assessee had made investment which would yield income in form of dividend and therefore, investment was made for the purpose of earning income. Accordingly, CIT (Appeals) and the Tribunal were of the opinion that the expenditure incurred for earning such income had to be allowed under Section 36(1)(iii) of the Act. We do not find any error in such view. No question of law arises.

3. Second question relates to the addition of Rs.3.05 crores made by the Assessing Officer while disallowing expenditure under Section 37(1) of the Act. In this respect, the Tribunal while upholding the decision of CIT (Appeals) held that while making advances to the sister concerns, the assessee was acting in the normal course of business and that the interest expenditure was therefore allowable as per Section 36(1)(iii) of the Act. It was recorded that the Assessing Officer had not brought anything to prove that the expenditure incurred towards interest was not wholly and exclusively for carrying out the business of the assessee. The Tribunal therefore, confirmed the order of the CIT

(Appeals). When CIT(Appeals) and the Tribunal have concurrently held that the expenditure was incurred for the purpose of the business of the assessee, we find no reason to interfere. No question of law therefore arises.

4. The last surviving question relates to disallowance of Rs.2.33 crores (rounded off) made by the Officer under Section 14(A) r/w Rule 8D of the Income Tax Rules. The revenue has raised several contentions in this respect before the Tribunal which were rejected, such contentions also repeated before us. However, we propose to dismiss this ground only on one issue, the finding of the CIT (Appeals) and the Tribunal that the assessee had sufficient interest free fund in excess of interest bearing fund to make investment which would result in exempt income. The Tribunal in this respect relied upon decision of this Court in case of **HDFC bank Limited Vs. Deputy Commissioner of Income-tax and ors.**¹. Such being the facts and settled law, no question of law arises. We make it clear that in view of this factual and legal conclusion revenue's other grievances in relation to the

1 (2016) 383 ITR 529 (Bom)

Tribunal's judgment on this issue become academic and have not been gone into. Appeal is dismissed.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

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