

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.147 of 2018

Date of decision: 04.02.2019

Pr. Commissioner of Income Tax, Panchkula

.....Appellant

Vs.

**M/s Haryana State Industrial and Infrastructure Development
Corporation Limited**

....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Yogesh Putney, Senior Standing Counsel for the appellant-revenue.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 147 to 149, 155, 161, 175, 179, 180 and 223 of 2018, as according to the learned counsel for the appellant-revenue, the issue involved in all these appeals is identical. However, the facts are being extracted from ITA No.147 of 2018.

2. ITA No.147 of 2018 has been filed by the appellant revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 16.11.2017 passed by the Income Tax Appellate Tribunal, Division Bench 'A', Chandigarh in ITA No.184/CHD/2010 for the assessment year 2005-06. Following substantial questions of law have been claimed in ITA Nos.147, 148, 175 and 179 of 2018:-

- a) Whether on the facts and in the circumstances of the case, the learned ITAT has erred in law and facts in deleting the addition of ₹ 85,73,413/- on sale of shares by holding it as Capital Gains, ignoring that the investment in equity shares by way of equity participation is nothing but business investment of the assessee and the profit earned on sale of these shares on

the basis of buy back arrangement is business income of the assessee?

- b) Whether the learned ITAT has erred in law and facts of the case in deleting the addition of ₹ 85,73,413/- on sale of shares by holding it as Capital Gains by relying upon ***Punjab State Industrial Corporation Limited vs. DCIT*** reported as (2006) 102 ITD 1 (Chd.) (SB) while ignoring that the observation of ITAT in Punjab State Industrial Corporation Limited (supra) is an obiter dicta and not ratio of the decision and that the issue for consideration before ITAT in that case was whether deduction on inter-corporate dividend under section 80M of the Income tax Act, 1961 was allowable on net dividend after reducing proportionate expenses. The issue whether profit earned on sale of equity shares on the arrangement of buy back by the borrowers is business income or not was before the learned ITAT in the case of PSIDC (supra)?
- c) Whether on the facts and in the circumstances of the case, the order passed by the learned Income Tax Appellate Tribunal is perverse in nature and against law as it grossly overlooked the scheme of the Income Tax Act, 1961 and material available on record?
- d) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in applying the principle of consistency without examining the issue independently on merits as each assessment year is an independent assessment year and non examination/examination of issue due to inadvertence or otherwise would neither preclude nor bar nor res judicata for the revenue to consider the issue on its own merits in the subsequent years irrespective of earlier years?

In ITA Nos.149, 155, 161 and 180 of 2018, following additional substantial questions of law have been claimed:-

- i) Whether the learned ITAT has erred both on facts and law in deleting the addition of ₹2,97,432/- made on account of dividend claimed exempt by holding the activity of the assessee as investment and not trading in shares despite that in reality the shares acquired by the assessee is closely related to its business of financing the units and earn minimum rate of interest as a part of the pre-determined price of sale of share?
- ii) Whether learned ITAT has erred in law and facts of the case in deleting the addition of ₹2,97,432/- made on account of dividend claimed exempt by holding the activity of the assessee as investment and not trading in shares by ignoring the fact that the Hon'ble Supreme Court in **Brook Bond & Co. Limited vs. CIT**, (1986) 162 ITR 373 (SC) held that if ownership of shares is incidental to carrying on of the business, or, if the shares are held as business assets, dividend income should be treated as income from business?

In ITA No.223 of 2018, identical additional substantial question of law as quoted above as (ii) has been claimed which reads thus:-

“Whether learned ITAT has erred in law and facts of the case in deleting the addition of ₹3,26,060/- made on account of dividend claimed exempt by holding the activity of the assessee as investment and not trading in shares by ignoring the fact that the Hon'ble Supreme Court in **Brook Bond & Co. Limited vs. CIT**, (1986) 162 ITR 373 (SC) held that if ownership of shares is incidental to carrying on of the business, or, if the shares are held as business assets, dividend income should be treated as income from business?”

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.147 of 2018 may be noticed. The assessee-corporation was set up with the objective of development of industries in

the State of Haryana. It is primarily engaged in the financing activities and developing the industrial estates. The assessee for the assessment year in question i.e. 2005-06 filed its return of income on 29.10.2005 by declaring an income of ₹12,93,53,616/-. The assessee maintained its accounts on cash system of accounting. Notice under Section 143(2) of the Act was issued and served on the assessee on 31.1.2006. The assessee participated in the proceedings through its representative and furnished books of account etc. After considering the entire material on record, the Assessing Officer framed the assessment vide order dated 24.12.2007, Annexure A.1, making the following additions:-

- i) Addition on account of unclaimed refunds amounting to ₹ 3,67,81,729/-
- ii) Addition on account of income from industrial area activities amounting to ₹35,45,87,944/-;
- iii) Addition on account of income from sale of shares amounting to ₹85,73,413/-;
- iv) Addition on account of deduction under Section 36(1)(viii) amounting to ₹8,32,000/-.”

The assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 30.11.2009, Annexure A.2, the appeal was dismissed and the additions were confirmed. Aggrieved thereby, the assessee filed appeal before the Tribunal. Vide composite order dated 16.11.2017, Annexure A.3, the Tribunal partly allowed the appeal. With regard to addition on account of unclaimed refund of ₹3,67,81,729/-, the Tribunal disposed of the same in view of the admission of the assessee that a period of three years from the date of issue of cheque was a reasonable period of limitation for the liability to subsist and the liability subsisting beyond three years be treated as business income earned in the ordinary

course of business. However, the assessee requested for excluding certain amounts from the unclaimed refunds barred by limitation. As regards the addition on account of income from industrial area activities amounting to ₹35,45,87,944/-, the matter was restored to the Assessing Officer to verify the correctness of the claim made in the certificate that the income for the impugned year had been reflected in the assessment year 2014-15 and further to verify that the same had been included in the taxable income of the assessee for the impugned year and due taxes paid thereon and thereafter decide the issue in accordance with law. As regards income from sale of shares amounting to ₹85,73,413/-, the Tribunal followed the order passed by special bench of the Tribunal in the case of **Punjab State Industrial Corporation Limited**'s case (supra). It was recorded that since inception, the assessee had been claiming the profits earned from sale of shares as capital gains which had never been disputed by the revenue and there was no change in the circumstances in respect of impugned assessment year. The Tribunal applied the principles of consistency and deleted the addition by holding that the profit earned from sale of shares was capital gains and not income from business. Hence the instant appeals by the appellant-revenue.

4. We have heard learned counsel for the appellant-revenue.

5. The grievance of the appellant revenue is that the Tribunal erred in law in holding that the assessee corporation had been claiming the profits earned from sale of shares as capital gains which had never been disputed by the revenue and there was no change in the circumstances in respect of impugned assessment year. The Tribunal applied the principles of consistency and deleted the addition by holding that the profit earned from

sale of shares was capital gains and not income from business. After thoroughly examining the issues, detailed findings have been recorded by the Tribunal. Firstly, the assessee had shown profits earned from the sale of shares as capital gains and claimed exemption from payment of tax on the same. The Assessing Officer held that the basic intention of holding equity shares by the assessee was to earn interest on the loans advanced and therefore held that the transaction could not be classified as capital gain. The Assessing Officer further held that it was in the ordinary course of business of the assessee and related to its primary object of financing and was therefore clearly business profit of the assessee. Therefore, the profit of ₹ 85,73,413/- was held to be business profit of the assessee. The CIT(A) held that the dominant intention of the assessee was to finance the units and had minimum percentage of return on the same and therefore, income earned was in the nature of business income of the assessee. The assessee relied upon the judgment of the special bench of the Tribunal in the case of ***Punjab State Industrial Development Corporation's*** case (supra) and circular dated 15.6.2007 of CBDT which referred to the principles on the basis of which it had to be decided whether these were capital investments or stock in trade. The Tribunal recorded that the assessee in the said case was involved in identical activity of financing industrial undertakings and the issue was raised before the Bench whether profits earned from sale of shares would be business income or capital gains. The issue was thereafter decided in favour of the assessee holding the profits earned to be in the nature of capital gains. It was further recorded that since inception the assessee had been claiming the profits earned from sale of shares as capital gains which had never been disturbed by the revenue. Thus, the profits earned by the assessee from sale of shares were treated as capital gain and

addition made by treating the same as income from business of the assessee was rightly deleted. With regard to the addition on account of unclaimed refund, the Tribunal disposed of the same in view of the admission of the assessee that a period of three years from the date of issue of cheque was a reasonable period of limitation for the liability to subsist and the liability subsisting beyond three years be treated as business income earned in the ordinary course of business. On the issue of addition on account of income from industrial area activities, the Tribunal restored the issue to the Assessing Officer to verify the correctness of the claim made in the certificate that the income for the impugned year had been reflected in the assessment year 2014-15 and further to verify that the same had been included in the taxable income of the assessee for the impugned year and due taxes paid thereon and thereafter decide the issue in accordance with law. The relevant findings recorded by the Tribunal read thus:-

“The challenge in the above ground is to the treatment of profits earned on sale of shares as business income of the assessee as against capital gain shown by the assessee.

Brief facts relevant to the same are that the assessee had shown profits earned from the sale of shares as capital gains and claimed exemption from payment of tax on the same. The Assessing Officer found that there were two methods followed by the assessee of doing its financing business. First being equity proportionate and second investment banking. The Assessing Officer observed that in both the cases, the assessee released the amount of advance after adjusting the amount of interest accrued on such loan meaning thereby that the assessee retained the equity of the borrower and subsequently sold it back to the borrower or in the open market fixing minimum rate of sale to be inclusive of the interest of 20% per annum. The Assessing Officer, therefore, held that the basic intention

of holding equity by the assessee was to earn interest on the loans advanced and therefore held that the transaction could not be classified as capital gain. The Assessing Officer held that it was in the ordinary course of business of the assessee and related to its primary object of financing and was therefore, clearly business profit of the assessee. He therefore held the profit of ₹ 85,73,413/- to be the business profit of the assessee.

Before the Id. CIT(Appeals), the assessee pleaded that it was participating in equity for the past 20 years and funds for the purpose were being supplied by the State Government by way of share capital. It was pointed out that no interest bearing funds were used for this activity. The assessee also pointed out that while purchasing the equity of any company there was a condition that such equity would not be disposed off by the assessee before the period of atleast 3 to 5 years. Thus, the assessee pointed out that intention as never to trade in shares or to do business but to make long term investment, which was to be treated as capital asset. The assessee relied upon the judgment of the special bench of ITAT in the case of PSIDC vs. DCIT reported in 292 ITR 268 and on Circular No.4 dated 15.6.2007 of the CBDT, which referred to the principles on the basis of which it has to be decided whether these are capital investments or stock in trade. The Id. CIT(Appeals) rejected the contentions of the assessee holding that the dominant intention of the assessee was to finance the units and had minimum percentage of return on the same and therefore income earned was in the nature of business income of the assessee.

XXXXXXXXXXXXX

27. We have heard the contentions of both the parties. We have also gone through the order of the special Bench of the ITAT in the case of Punjab State Industrial Development Corporation Limited (supra). On perusal of the same we find that the

assessee in the said case was involved in identical activity of financing industrial undertakings and identical issue was raised before the Bench whether profits earned from sale of shares would be business income or capital gains. The relevant portion of annual report of the corporation for financial year 1996-97 was relied upon to determine the nature of the activities carried out by the assessee....

XXXXXXXXXXXXXXXXXXXX

The issue was thereafter decided in favour of the assessee holding the profits earned to be in the nature of capital gains.

28. Moreover on another issue before the Bench, whether the deduction under Section 80M of the Act on the dividend earned was to be determined after deducting proportionate administrative expenses or interest expenses, it was held that the nature of holding of the shares was imperative to decide the issue. The majority view of the Bench, on the nature of the investment, was that the assessee was holding shares as capital investment.....

XXXXXXXXXXXXXXXXXXXX

Since the facts in the present case are identical to that in the case of PSIDC, the issue stands squarely covered by the said decision.

29. The Revenue contended before us that the findings were mere observations i.e. obiter dictum. We find no merit in the same since on the issue of the nature of profits earned the ITAT has clearly held the same to be in the nature of capital gains. Further even on the issue of deduction under Section 80M the findings of the ITAT that the purchases of shares was by way of investment cannot be said to be an obiter dictum. An obiter dictum is a latin phrase meaning “by way” i.e. a remark in a judgment that is said in passing. As is evident from the above, the said were the findings of the majority view based on the facts of the case which cannot be termed as

incidental or passing remark or opinion. Therefore, we reject the contention of the revenue that the decision in the case of PSIDC cannot be applied to the facts of the present case.

Moreover, it is not disputed that since inception the assessee has been claiming the profits earned from sale of shares as capital gains which has never been disturbed by the revenue. No change in the circumstances in respect of the impugned assessment year have also been brought to our notice. Therefore, we agree with the learned counsel for assessee that there was no reason to disturb that position in the impugned year. The Hon'ble Apex Court in the case of *Radha Soami Satsang vs. CIT* 193 ITR 321 (SC) held that where fundamental aspect permeating through different assessment years has been found as a fact one way or the other and parties had allowed that position to be sustained by way of not challenging that order, then it would not at all be appropriate to permit that position to be challenged in subsequent year.

30. In view of the same, we hold that the profits earned by the assessee from sale of shares be treated as capital gain and addition made by treating the same as income from business of the assessee be deleted.”

6. On identical issue in *Commissioner of Income Tax II, Chandigarh vs. Punjab Agro Industries Corporation Limited*, (2014) 221 TAXMAN 419 (P&H), the assessee was a Punjab Government undertaking. Its principal objects were to promote agro/horticulture based industry. It filed its return. The Assessing Officer observed that surplus/loss on sale of shares was to be considered as a business income/loss since investment in shares amounted to a business activity whereas the assessee had declared surplus/loss on the shares as capital gain/loss. On appeal, the CIT(A) partly allowed the assessee's claim. The Tribunal upheld the order of the CIT(A) and held that sale of investment of shares was liable to be taxed under the

head “Capital gains”. It was held by this Court that the Tribunal rightly considered the facts that investment made in the shares of companies which were jointly promoted by the assessee alongwith the private entrepreneurs, was with the basic object of promoting agro/horticulture based industry in the State of Punjab and not as a dealer in shares with the object of trading. Infact, the object of trading in shares was lacking in as much as the financial collaboration agreement itself prescribed that the shares shall be bought back by the private promoter after a specified period at a defined consideration. Therefore, realization from such investments was liable to be taxed under the head “Capital gains” and not as business activity. The relevant observations recorded by this Court read thus:-

“2. Learned counsel for the appellant submitted that the investments made by the assessee in the shares and the sales thereof was exigible under the head profit and gain from business and not capital gains as has been held by the Tribunal.

3. After hearing learned counsel for the appellant, we do not find any merit in the appeal. The Tribunal while rejecting the contention of the revenue had held as under:-

“5. We have considered the rival submissions carefully. We have also perused the precedent referred the CIT (Appeals) in support of his conclusion that the activity of the assessee in investing in shares is not a business activity but is liable to be taxed under the head 'capital gain'. In our view, the nature of activity of taking up the shares in the private companies which are jointly promoted with the private entrepreneurs cannot be equated to an ordinary investor who takes up the shares as a dealer in shares. The assessee corporation undertakes investment in projects in terms of collaboration agreement with the private entrepreneurs with a view to promote agriculture/horticulture industries in the State of Punjab. At the

time of investment itself, it is agreed that the private entrepreneurs shall purchase the shares held by the assessee after completion of five years from the date of start of the commercial production. In fact, the CIT(Appeals) in para 8 of his order has also enumerated the mechanism by which the sale consideration is arrived at. It is provided that in case shares are not quoted the stock exchange, interest on the amount invested is included upto the date of disinvestment at 1% above the bank rate of interest. The interest so calculated is added to the principal amount to work out the sale consideration of the shares. In case of stock exchange quoted shares, sale consideration is calculated as per the interest method stated above or the value at which the shares are quoted in the stock exchange, whichever is higher. We are referring to the aforesaid terms & conditions of the investment made by the assessee only to point out that it is not a case where a person is investing in shares as a business proposition of deal in the shares. The investment made in the shares of the companies which are jointly promoted by the assessee along with the private entrepreneurs, is with the basic object of promoting agro/horticulture based industry in the State of Punjab and not as a dealer in shares with the object of trading. In fact, the object of trading in shares is lacking in as much as the financial collaboration agreement itself prescribes that the shares shall be bought back by the private promoter after a specified period at a defined consideration. In fact, in the case of PSIDC Ltd. (supra), the Tribunal has also considered similar aspects and have held that the realization of such investment is liable to be taxed under the head 'capital gains' and not as a 'business activity.'

6. Apart from the aforesaid, we also find that the assessee contended that in the past years all along, such activity of the assessee has been accepted as a pure investment activity and not a business activity. Therefore, even on the principle of consistency, the position taken by the assessee and having been

accepted by the Department in the earlier assessment years, cannot be departed without cogent cause and justification. The Revenue has not brought out any change in the facts or in law which would justify departure from the accepted position in the earlier years.

4. Further, the Tribunal had relied upon its decision in the case of Punjab State Industrial Development Corporation Ltd. (ITA No. 1333/Chandi/94 and ITA Nos. 944 & 1591/Chandi/95) decided on 22.11.1996 against which reference had been filed before this Court which was numbered as ITR No. 20 of 2000. Question No.2 at the instance of the revenue therein was as under:-

“2. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the investment in shares of companies jointly promoted by the Corporation along with other industrial undertakings, is in the nature of investment and not stock-in-trade and profit realised on disinvestment in these shares, is not business income but a capital gain?”

5. This Court vide judgment dated 30.9.2010 held as under:-

“11. In the present case, as has been found by the Tribunal, the assessee was advancing the industrial policy of the State and in that process, investment was made in the new projects and after level of self- sufficiency was achieved, disinvestment was done. The view of the Tribunal that realization of investment was liable to tax under the head capital gains was certainly a possible view, particularly when the revenue itself has been accepting this position upto the assessment year 1989-90. Judgment of Madras High Court, in facts of the present case, does not support the stand of the revenue.”

12. Whether income in a particular case falls under the head of capital gains or business depends upon nature of business of the assessee and attending circumstances. At times, the dividing line for deciding the head of income may be very thin and the heads may

overlap. Parameters for deciding this question have been discussed by the Hon'ble Supreme Court, inter-alia, in [Khan Bahadur Ahmed Alladin and Sons v. CIT](#), (1968) 68 ITR 573 = AIR 1968 SC 788 [Chandigarh and Commissioner of Income Tax, Nagpur v. M/s Sutlej Cotton Mills Supply Agency Limited](#), (1975) 100 ITR 706 = AIR 1975 SC 2106.

13. In M/s Sutlej Cotton Mills Supply Agency, it was observed:-

"11. The principles underlying the distinction between a capital sale and an adventure in the nature of trade were examined by this Court in [Venkataswami Naidu & Co. v. CIT](#), (1959) 35 ITR 594 = AIR 1959 SC 359, where this Court said that the character of a transaction cannot be determined solely on the application of any abstract rule, principle or test but must depend upon all the facts and circumstances of the case. Ultimately, it is a matter of first impression with Court whether a particular transaction is in the nature of trade or not it has been said that a single plunge may be enough provided it is shown to the satisfaction of the Court that the plunge is made in the waters of the trade; but mere purchase/sale of shares-if that is all that is involved in the plunge-may fall short of anything in the nature of trade. Whether It is in the nature f trade will depend on the facts and circumstances.

XX XX XX XX

13. Where a purchase is made with the intention of resale, it depends upon the conduct of the assessee and the circumstances of the case whether the venture is on capital account or in the nature of trade. A transaction is not necessarily in the nature of trade because the purchase was made with the intention of resale [see [Jenkinson v. Freeland](#) (1961) 39 Tax Cases 636; [Radha Debi Jalan v. CIT](#) (1951) 20 ITR 176 (Cal); [India Nut Co. Ltd. v. CIT](#) (1960) 39 ITR 234 = AIR 1959 Ker 298; [M/s. Sooniram Poddar v. CIT](#) (1939) 7 ITR 470 (478-479) = AIR 1939 Rang 337; at p. 338; [Ajax Products Ltd. v. CIT](#) (1961) 43 ITR 297 (310) (Mad); [Gustad Irani v.](#)

CIT (1957) 31 ITR 92 (Bom); and Mrs. Alexander v. CIT (1952) 22 ITR 379, 402 = AIR 1953 Mad 166, 170).

14. A capital investment and resale do not lose their capital nature merely because the resale was foreseen and contemplated when the investment was made and the possibility of enhanced values motivated the investment [see Leeming v. Jones (1930) 15 Tax Cases 333 and also the decisions of this Court in Saroj Kumar Mazumdar v. CIT (1959) 37 ITR 242 (250-251) = AIR 1959 SC 1252, 1258-[1259](#) and [Janki Ram Bhadur Ram v. CIT](#) (1965) 57 ITR 21 = AIR 1965 SC 1898).”

In view of the above, the substantial questions of law are answered against the revenue and in favour of the assessee. Consequently, the appeal stands dismissed.”

7. With regard to the additional question in ITA Nos.149, 155, 161, 180 and 223 of 2018 qua deleting the addition made on account of dividend claimed exempt by holding the activity of the assessee as investment and not trading in shares, the Assessing Officer held that since the assessee corporation had been set up with the main object to establish industrial estates and to provide finance for growth of industry in the State, the shares acquired by it were closely related to its business activity and dividend income earned therefrom was thus to be treated as income from business. The CIT(A) upheld the addition so made. Before the Tribunal, the assessee contended that the dividend income had been exempted from the taxation by Finance Act, 2003 w.e.f 1.4.2004 by virtue of insertion of Section 10(34) in the Act and it made no difference whether dividend income was in the nature of business income or otherwise and the same could not be subjected to tax in any case. The Tribunal after examining the matter recorded that the Finance Act, 2003 inserted clause (34) to section

10 which deals with income which is exempt from taxation and does not form part of the total income at all excluding the income by way of dividend from the purview of taxation. At the same time, Section 115-O was inserted in the Act making the companies distributing dividend to pay tax at a specified rate thereon. Thus, taxation of dividend changed hands from the recipient to the payer of dividend by virtue of this amendment brought about in the Act. The case of *Brook Bond India Limited* (supra) did not apply to the present case since it related to the assessment years 1955-56 when the position of law vis a vis taxation of dividend was governed by the Income Tax Act, 1922 which taxed dividend in the hands of the recipient. It was further recorded that since the dividend income was exempt from tax, the provisions of Section 14A of the Act disallowing expenses incurred for earning the same were attracted. For that limited purpose, the issue was restored back to the Assessing Officer to decide the same in accordance with law after giving due opportunity of hearing to the assessee. The relevant findings recorded by the Tribunal in this regard read thus:-

“40. During the impugned assessment year the assessee had earned dividend income amounting to ₹ 2,97,432/-. The Assessing Officer held that since the assessee corporation had been set up with the main object to establish industrial estates and to provide finance for growth of industry in the State, the shares acquired by it were closely related to its business activity and dividend income earned there from was thus to be treated as income from business. The Assessing Officer relied upon the decision of the Hon’ble Apex Court in the case of *Brook Bond India Limited vs. CIT*, 162 ITR 373. He further held that the provisions of section 14A would come into play and proportionate expenditure also was disallowed in case the

dividend income is held to be exempt. The learned CIT(Appeals) upheld the addition so made.

41. Before us, the learned counsel for the assessee stated that the dividend income has been exempted from the taxation by the Finance Act, 2003 w.e.f 1.4.2004 by virtue of insertion of section 10(34) in the Act and, therefore, it made no difference whether dividend income was in the nature of business income or otherwise and the same could not be subjected to tax in any case.

42. The learned DR on the other hand, supported the order of the CIT(Appeals) and the Assessing Officer.

43. We have heard the contentions of both the parties. We find merit in the contentions of the learned counsel for assessee. The Finance Act, 2003 inserted clause (34) to section 10 which deals with income which are exempt from taxation and do not form part of the total income at all, excluding the income by way of dividend from the purview of taxation. At the same time, we find section 115-O was inserted in the Act making the companies distributing dividend to pay tax at a specified rate thereon. Thus, taxation of dividend changed hands from the recipient to the payer of dividend by virtue of this amendment brought about in the Act. Dividend of all nature and colour whether sourced from the business activities of the assessee or otherwise is not taxable in the hands of the recipient but is to be taxed by the payer of dividend or in other words, the companies declaring and distributing dividend. In view of the same, therefore, we cannot agree with the contentions of the Revenue that the said dividend is to be taxed in the hands of the assessee being in the nature of business income. The reliance placed on the decision of the Hon'ble Apex Court in the case of Brook Bond India Limited (*supra*) does not apply to the present case since it related to the assessment year 1955-56 and 1956-57 when the position of law vis a vis taxation of

dividend was governed by the Income Tax Act, 1922 which taxed dividend in the hands of the recipient.

Even otherwise we have already held that the income earned from sale of shares be treated as capital gains, holding the activity of the assessee as investment and not trading in shares, therefore, the dividend income earned from the shares cannot be said to be from business activity of the assessee.

However, since the dividend income is exempt from tax, the provisions of section 14A disallowing expenses incurred for earning the same are attracted. For the limited purpose of applying the provisions of section 14A, the issue is restored back to the file of the AO, with a direction to decide the issue in accordance with law after giving due opportunity of hearing to the assessee.

44. In view of the same, the addition made to the income of the assessee on account of dividend income is, therefore, deleted. And the issue of determining the expenses disallowable as per section 14A is restored to the file of the Assessing Officer.”

8. The findings recorded by the Tribunal on all the issues are findings of facts which have not been shown to be illegal or perverse by the learned counsel for the appellant-revenue, warranting interference by this Court. Thus, no substantial question of law arises. Consequently, all the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

February 04, 2019
‘gs’
Whether speaking/reasoned
Whether reportable

(Manjari Nehru Kaul)
Judge
Yes
Yes