IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-237-2018 (O&M)

Date of Decision: 20.3.2019

The Principal Commissioner of Income Tax-2, Chandigarh

....Appellant.

Versus

M/s Dabwali Transport Company Pvt. Ltd., Bathinda

...Respondent.

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

PRESENT: Ms. Urvashi Dhugga, Sr. Standing Counsel for the appellant.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 237 and 416 of 2018, as according to learned counsel for the revenue, identical issues are involved therein. For brevity, the facts are being taken from ITA-237-2018.

2. ITA-237-2018 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.10.2017 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 76(Asr)/2017, claiming the following substantial questions of law:-

i). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the addition of ₹ 65,97,366/- made u/s 14A read with Rule 8D on the ground that no tax free income has been earned by the assessee, in contravention to Board's Circular No. 5/2014 dated 11.02.2014?

ii). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in observing that as per Section 14A(3) where the respondent claimed that no expenditure had been incurred by it in relation to income which did not form part of the total income, the provisions of section 14A(2) would not apply whereas section 14A(2) specifically provided that provisions of section 14A(2) would apply even in relation to a case where the respondent claimed that no expenditure had been incurred in relation to income which did not form part of the income and the A.O. is not satisfied with the correctness of the claim made by the assessee?

iii). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in ignoring the legislative intent expressed in CBDT's Circular No. 5/2014 dated 11.02.2014 which explicitly states that expenses relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during the F.Y. or not?

iv). Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in following the decisions of Hon'ble High Courts whose facts were distinguishable from the taxpayers, ignoring the principal laid down by Hon'ble Supreme Court decision in CIT vs. Walfort Share and Stock Brokers P Ltd. 326 ITR 1 (SC) and that the department is in SLP in several cases on this issue 'Niligiri Infrastructure Development Ltd. ITA No. 135 of 2016 A.Y. 2009-10 of Delhi High Court and Instant Holding Ltd. ITA No. 2168 of 2011?

3. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 30.9.2012 for the assessment year 2012-13 declaring an income of ₹ 13,60,37,129/-. The Assessing Officer vide order dated 31.3.2015 (Annexure A-1) completed the assessment under Section 143(3) of the Act at an income of ₹ 14,30,34,500/- by, *inter alia*, making the additions of ₹ 65,97,366/- on account of disallowance of interest under Section 14A of the Act to the returned income of the assessee.

4. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short "the CIT(A)"] challenging the addition of ₹ 65,97,366/- on account of disallowance of interest under

Section 14A of the Act. The CIT(A) vide order dated 20.10.2016 (Annexure A-2) allowed the appeal and deleted the said addition. The revenue challenged the order, Annexure A-2, before the Tribunal. The Tribunal vide order dated 31.10.2017 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal of the revenue. Hence, the present appeal by the revenue against the deletion of disallowance made under Section 14A of the Act.

5. We have heard learned counsel for the revenue.

6. It was not disputed by the learned counsel for the revenue that the aforesaid matter is covered by the judgment of this Court in **ITA No. 322 of 2016 (Principal Commissioner of Income Tax-I, Chandigarh v. M/s Vardhman Chemtech Private Limited, Chandigarh)** decided on 28.8.2018, wherein the appeal filed by the revenue was dismissed.

7. Accordingly, the appeals are dismissed in terms of ITA No. 322 of 2016 decided on 28.8.2018.

(AJAY KUMAR MITTAL)
JUDGE

March 20, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**