IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA-354-2018 (O&M)

Date of Decision: 10.5.2019

Principal Commissioner of Income Tax-I, Ludhiana

....Appellant.

Versus

M/s Trident Limited, Ludhiana

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

PRESENT: Mr. Rajesh Katoch, Sr. Standing Counsel with
Ms. Pridhi Jaswinder Sandhu, Jr. Standing Counsel
for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 against the order dated 29.11.2017 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 184/Chd/2016, for the assessment year 2011-12, claiming the following substantial question of law:-

> Whether upon facts and circumstances of the case, was the Hon'ble ITAT justified in law in restricting the addition made u/s. 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 upto the exempt income earned by the assessee?

2. A few facts necessary for adjudication of the instant appeal as

narrated therein may be noticed. The assessee is engaged in the business of manufacturing and processing of Yarn, Terry Towel, Paper, Sulphuric Acid and General of Power. It filed its return of income on 30.9.2011 for the assessment year 2011-12 declaring 'nil' income and income under Section 115JB of the Act at ₹ 91,69,03,125/-. The Assessing Officer vide order dated 11.3.2014 (Annexure A-I) framed the assessment under Section 143 (3) of the Act by making addition of ₹ 2,15,56,021/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short “the Rules”) besides other additions. Feeling aggrieved by the order, Annexure A-I, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT(A)”]. The CIT(A) vide order dated 28.12.2015 (Annexure A-II) deleted the disallowance of ₹ 2,15,56,021/- made under Section 14A of the Act read with Rule 8D of the Rules. Against the order, Annexure A-II, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 29.11.2017 (Annexure A-III) restricted the disallowance under Section 14A of the Act read with Rule 8D of the Rules upto the exempt income earned by the assessee. Hence, the present appeal.

3. We have heard learned counsel for the revenue.

4. It was not disputed by the learned counsel for the appellant-revenue that the issue involved herein is concluded by the decision of this Court in **ITA-270-2016 (The Pr. Commissioner of Income Tax, Patiala v. State Bank of Patiala)** decided on 27.2.2017 wherein it was held that the amount of disallowance under Section 14A of the Act was restricted to the amount of exempt income only and not at a higher figure.

5. Further, the Supreme Court in **Civil Appeal Nos. 104-109 of**

2015 (Maxopp Investment Ltd. v. Commissioner of Income Tax, New Delhi decided on 12.2.2018, had in para 40 held as under:-

> "40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to

hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."

6. In view of the above, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 10, 2019 **(AVNEESH JHINGAN)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**