R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1308 OF 2017

Pr. Commissioner of Income Tax-1, Mumbai .. Appellant

Versus

M/s. Ami Industries (India) Pvt Ltd
(Now known as Amit Tech (India) Pvt Ltd .. Respondent

....

- Mr. Suresh Kumar a/w Ms. Sumandevi Yadav & Ms. Priyanka Tiwary for the Appellant
- Mr. Riyaz Padvekar a/w Mr. Tanzil Padvekar for the Respondent

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 29, 2020.

P.C.:

1. Heard learned counsel for the parties.

2. This appeal under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) is preferred by the revenue against the order dated 26.8.2016 passed by the Income Tax Appellate Tribunal, Mumbai "A" Bench, Mumbai in Income Tax Appeal No. 353/Mum/2015 for the assessment year 2011-12.

3. In this appeal, following four questions have been proposed as substantial questions of law:-

"(1) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in directing the deletion of sum brought to tax by the Assessing Officer as unexplained income under Section 68 of the Act in respect of moneys credited in the books as share application money of Rs. 7,20,00,000/-?

(2) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the assessee proved identity, creditworthiness and genuineness of moneys credited in the books as share application money of Rs. 7,20,00,000/- just by submitting PAN, acknowledgment of income tax reruns filed and bank statements?

(3) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs. 7,20,00,000/- ignoring the facts brought out by the Assessing Officer that return of the investing company shows no credit worthiness and that investing company merely transferred share application money received from other parties to assessee company?

(4) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that disallowance u/S. 14A cannot be more than the exempt income earned during the year when provisions of Section 14A of the Act does not provide for any such limit of disallowance?"

4. Regarding question Nos. (1) to (3) :

We have already upheld the common order of the Tribunal passed in the case of the assessee itself for the assessment year 2010-11 in Income Tax Appeal No. 1231 of 2017. Therefore, question Nos. (1), (2) and (3) would stand covered by the said decision.

5. Regarding question No. (4) :

This issue is also covered by the decision of the Delhi High Court in **Pr. CIT Vs. Caraf Builders & Constructions (P) Ltd**[1] wherein Delhi High Court held that upper disallowance cannot exceed exempt income of relevant assessment year. In other words, where assessee had not earned any tax free income, corresponding expenditure could not be worked out for disallowance. Thus, disallowance under Section 14A of the Act cannot exceed exempt income of the relevant year.

6. SLP filed against the aforesaid decision by the revenue has been dismissed by the Supreme Court in **Pr. Commissioner of Income Tax-2 Vs. Caraf Builders &**

1 [2019] 101 taxmann.com 167

Constructions (P) Ltd[2]. In that view of the matter, question No. (4) also does not arise.

7. Resultantly, the appeal is dismissed.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar

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2 [2019] 112 taxmann.com 322 (SC)