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

INCOME TAX APPEAL NO. 1996 OF 2017

Pr. Commissioner of Income Tax -27, Mumbai .. Appellant

v/s.

Bank of India .. Respondent

Mr.Suresh Kumar for Appellant.
Mr. Subhash S. Shetty for Respondent.

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

DATE : JANUARY 23, 2020.

P. C.:-

. Heard Mr.Suresh Kumar, learned standing counsel, revenue for the appellant and Mr.Subhash Shetty, learned counsel for the respondent-assessee.

2. This appeal under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) is preferred against the order dated 13.07.2016 passed by the Income Tax Appellate Tribunal, "B" Bench Mumbai, Mumbai (**"Tribunal"** for short) in Income Tax Appeal Nos. 2966-

3085/Mum/2014 for the Assessment Year 2007-08.

3. Following three questions have been proposed as substantial questions of law by the revenue in the present appeal :

> "(a) Whether on the facts and in the circumstances of the case, the Hon. Tribunal was correct in law, in holding that the provisions of Rule 8D of the Income Tax Rules, 1962, are not applicable to assessments prior to AY 2008-09, even if such tool made available to AO at the time of assessment was considered by him as fair and reasonable and used as such?
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> (b) Whether on the facts and in the circumstance of the case, the Hon. Tribunal was correct in law in holding that the provisions of section 115JB of the Income Tax Act, 1961, are not applicable to assessee to whom proviso to sub-section (2) of section 211 of the Companies Act, 1956, applies i.e. companies which are not required to prepare its profit & loss account in accordance with Part-II & III of Schedule VI of the Companies Act, 1956 without appreciating that under section 115JB(2) of the Income Tax Act, 1961, every company is mandatorily required to prepare profit & loss account in accordance with the provisions of Part-II & III of Schedule VI of the

Companies Act, 1956, for income tax purposes?

(c) Whether on the facts and in the circumstances of the case, the Hon. Tribunal was correct in law, in holding that the amendment to section 115JB of the Income Tax Act, 1961, to bring all the companies (including companies to whom proviso to sub-section (2) of section 211 of the Companies Act, 1956, applies) is not applicable in the assessment year under consideration without appreciating that the said amendment is clarificatory in nature and, thus, retrospective in effect?"

4. Mr.Kumar, learned standing counsel very fairly submits that in so far question No.(a) is concerned, the issue raised therein has been concluded by the Supreme Court in favour of the assessee and against the revenue in the case of ***Commissioner of Income Tax- 5 Mumbai vs. Essar Teleholdings Ltd.,*** [2018] 90 taxmann.com2(SC) wherein it has been held that Rule 8D of the Income Tax Rules, 1962 is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09. This was also the view of this Court in ***Godrej and Boyce Manufacturing Co. Ltd. v/s. Deputy CIT,*** 328 ITR 81/194 Taxman 203(Bom.) which view has been

upheld by the Supreme Court.

4.1 In so far the present appeal is concerned, the assessment year in question is 2007-08. Therefore, in view of the decision of the Supreme Court as above, provisions of Rule 8D will not be applicable. Consequently, question No.(a) does not arise.

5. In so far question Nos.(b) and (c) are concerned, those are also covered by the decision of this Court in ***Commissioner of Income Tax- LTU vs. Union of India,*** [2019] 105 taxmann.com253(Bombay) by answering the questions in favour of the assessee and against the revenue.

6. In light of the above, we find no merit in the appeal. Consequently, the appeal is dismissed. However, there shall be no order as to cost.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN,J.)**