DDR

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

INCOME TAX APPEAL NO. 1488 OF 2017

Pr. Commissioner of Income Tax-2. ..Appellant
vs.
Bharat Petroleum Corporation Ltd.,
Taxation Section ..Respondent

…........

Mr. Suresh Kumar for appellant.
Mr. Jehangir Mistri, Senior Counsel a/w. Mr. Atul Jasani for respondent.

…........

CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 13 JANUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. By this Appeal the Appellant challenges the order dated 19 October 2016 in Income Tax Appeal No. 2258/Mum/2011 passed by the Income Tax Appellate Tribunal.

3. The Appeal pertains to the Assessment Year 2003-2004.

4. The following questions have been raised by the Appellant – Revenue as the substantial questions of law :-

"(A) Whether on the facts and in the circumstances of the case in law, the Income Tax Appellate Tribunal was justified in holding that bottling of the gas into gas cylinders as a production activity for the purpose of 80H, 80I and 80IA ignoring the fact that no new production comes into existence in this process ?

(B) Whether on the facts and in the circumstances of the case in law, the Income Tax Appellate Tribunal was justified in holding that bottling of the gas into gas cylinders as a production activity for the purpose of 80H, 80I and 80IA relying on the decision of the jurisdictional High Court in the case of CIT Vs. HPCL where in fact the Revenue has not accepted this decision ?

(C) On the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal erred in restricting the disallowance under Section 14A of the Income Tax Act read with 8D made by the Assessing Officer without appreciating that it was correctly worked out as per the method of calculation prescribed in Rule 8D of the Income Tax Rules, 1962 ?

(D) On the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal erred in restricting the disallowance under Section 14A of the Income Tax Act read with 8D made by the Assessing Officer without appreciating that the method of working of disallowance is held as reasonable method by jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. CIT 328 ITR 81 (Bom) ?"

5. As far as first questions No. A and B are concerned, the decision of the Supreme Court in the case of *Commissioner of Income Tax vs. Hindustan Petroleum Corporation Ltd. [2017] 396 ITR 696 (SC)* is placed on record. It is a common ground that in view of this dicta of the Supreme Court, the substantial questions of law as framed will have to be answered against the Appellant – Revenue.

6. As regard questions of law Nos.C and D are concerned, they proceed on the basis that principle laid down under Rule 8D of the Income Tax Rules, 1962 ought to have taken into consideration and applied in the case of the Respondent – Assessee. The Assessment Year in question is 2003-04. The Rule 8D is held to applicable from the assessment years 2008-09 in the case of *Commissioner of Income Tax vs. Essar Teleholdings Ltd. [2018] 401 ITR 445 (SC).*

7. In view of the above position, the questions of law cannot be considered as substantial questions of law. The Appeal is accordingly disposed of.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane Digitally signed by Diksha Rane Date: 2020.01.15 17:11:28 +0530