

R.M. AMBERKAR
(Private Secretary)

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

INCOME TAX APPEAL NO. 1701 OF 2017

Pr. Commissioner of Income Tax-7 .. Appellant

Versus

Morgan Stanley India Securities P Ltd .. Respondent

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- Mr. Suresh Kumar a/w Priyanka Tiwari & Sumandevi Yadav for the Appellant
 - Mr. Anupam Dighe a/w Ms. Chandani Tanna i/by India Law Alliance for the Respondent
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CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 21, 2020.

P.C.:

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

2. This appeal under Section 260A of the Income Tax Act, 1961 ("**the Act**" for short) has been preferred by the revenue against the order dated 5.1.2017 passed by the Income Tax Appellate Tribunal, Mumbai Bench 'B', Mumbai ("**the Tribunal**" for short) in Income Tax Appeal No.

114/Mum/2013 and Cross-objection No. 215/Mum/2015 for the assessment year 2008-09.

3. The appeal has been preferred projecting the following questions as substantial questions of law:-

- (a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the disallowance u/S. 14A of the Act on the account that no dividend income has been earned during the A.Y. under consideration, ignoring that the provisions of Section 14A are applicable even if no exempt income is actually earned or received during the year in any form whatsoever?
- (b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the disallowance u/S. 14A of the Act for the reason that no dividend income has been earned by ignoring the provisions of CBDT Circular No. 5/2014 dated 11.2.2014 wherein, it has been clarified that the Rule 8D r/w Section 14A provides for the disallowance of expenditure even where the assessee in particular has not earned exempt income?
- (c) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the disallowance u/S. 14A of the Act after holding that investments made by the assessee are strategic in nature without appreciating the recent pronouncement of the Karnataka High Court in the case of United Breweries Ltd Vs. DCIT (2016) 72 Taxmann.Com 102 (Karnataka) wherein, it is clearly stated

that strategic investment also fall in the purview of Section 14A?

4. From the above, it is evident that the issue involved is disallowance under Section 14A of the Act which was deleted by the Tribunal.

5. Section 14A deals with expenditure incurred in relation to income not includible in total income. Section 14A forms part of Chapter IV of the Act dealing with computation of total income. As per sub-section (1), for the purpose of computing the total income under the said Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act.

5.1. Admittedly, in the present case, stand of the department is that the expression 'includible' appearing in heading of Section 14A would mean that it is not necessary that exempt income should be included in the particular year's income for deduction to be allowed. Also Section 14A does not use the expression "income of the year" but "income under the Act". Therefore, for making disallowance

under Section 14A, it is not material that the assessee should have earned such exempt income during the previous year under consideration. This is based on CBDT Circular No. 5/2014 dated 11.2.2014.

6. This Court in the case of Commissioner of Income Tax Vs. M/s. Delite Enterprises (Income Tax Appeal No. 110 of 2009), decided on 26.2.2009 answering a similar question held that since there was no profit in the relevant assessment year, question of disallowance under Section 14A would not arise. This view has been reiterated by this Court in Income Tax Appeal No. 266 of 2017 (Pr. Commissioner of Income Tax -3 Vs. M/s. India Debt Management Pvt Ltd), decided on 15.4.2019, in the following terms:-

"The issue is no longer res-intigra. The facts are that the assessee had not earned any exempt income during the year under consideration. As held earlier by Delhi High Court which judgment is also followed repeatedly by our Court, in case of **Chemvinvest Ltd Vs. Commissioner of Income Tax, reported in 378 ITR 33**, in such a case disallowance of expenditure under Section 14A of the Act would not be permissible. The decision of Delhi High Court was carried in appeal by the revenue. The SLP has been dismissed by the Supreme Court."

7. Again Delhi High Court in case of **Pr. Commissioner of Income Tax -4 Vs. IL & FS Energy Development Company Ltd** (Income Tax Appeal No. 520 of 2017), decided on 16.8.2017, held that CBDT circular referred to herein above cannot override the statutory provisions and declined to admit the related appeal raising similar question.

8. Adverting to the facts of the present case, admittedly, there is no exempt income of the assessee in the year under consideration. Consequently, the questions proposed do not arise.

9. In view of the above, we find no merit in the appeal. The appeal is accordingly dismissed. No cost.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]

Ravindra
M.
Amberkar

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by Ravindra M.
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