IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.8.2020

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.780 OF 2018
(heard through video conferencing)

M/s.Express News Papers Pvt.Ltd.,
No.2, Express Estates,
Club House Road, Mount Road
Chennai-600 002. ...Appellant/Respondent

Vs

The Deputy Commissioner of Income
Tax, Corporate Circle-2(1),
Room No.511, 5th floor, Wanaparthy Block,
121, M.G.Road, Chennai-34. ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 01.8.2018 made in ITA.No.710/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2013-14, against the order dated 30/11/2017 made in ITA.No.136/CIT(A)-6/2016-17 on the file of Commissioner of Income Tax (Appeals)-6, Nungambakkam, Chennai-34 against the order dated 27/03/2016 made in PAN/GIR No.AAACE1702G. On the file of Assistant Commissioner of Income Tax, Corporate Circle (2(1) 121, M.G.Road, Nungambakkam, Chennai-33

For Appellant : Mr.G.Baskar

For Respondent : Mr.Karthik Ranganathan, SC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.G.Baskar, learned counsel appearing for the appellant - assessee and Mr.Karthik Ranganathan, learned Standing Counsel appearing for the respondent - Revenue.

2. This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order

dated 01.8.2018 made in ITA.No.710/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench (for brevity, the Tribunal) for the assessment year 2013-14, by which, the appeal filed by the Revenue was allowed and the cross objection namely Cross Objection No.65/Chny/2018 filed by the assessee was dismissed.

3. The appeal has been admitted on 13.11.2018 on the following substantial questions of law :

> "i.Whether on the facts of the case, the Income Tax Appellate Tribunal was right in law in reinstating the deletion made on account of disallowance u/s 14A r.w.Rule 8D by the Commissioner of Income Tax (Appeals) notwithstanding the fact that no exempt income was earned by the Appellant from this investment during this year ?
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> ii. Whether on the facts of the case, the Income Tax Appellate Tribunal was right in law in relying on the judgment of Hon'ble Supreme Court in the case of M/s.Maxopp Investment Ltd., which is on a totally different issue to reverse the order of the Commissioner (Appeals)? and
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> iii. Whether on the facts and in the circumstances of the case, the income Tax Appellate Tribunal was right in law in not relying on the decision of the Delhi Special Bench, of the Income Tax Appellate Tribunal in the case of M/s.Vireet Investment Pvt. Ltd., which has held that only those investments which had yielded exempt income during the year are to be considered for computing average value of investment for disallowing u/s. 14A?"

4. In so far as the first and the second substantial questions of law framed for consideration with regard to the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT [reported in (2018) 402 ITR 640], we have to necessarily hold that such questions cannot be canvassed, as the decision rendered by the Hon'ble Supreme Court would cover those questions. Therefore, substantial question of law Nos.1 and 2 need to be held against the assessee.

5. However, what is emphasized before us by Mr.G.Baskar, learned counsel appearing for the appellant - assessee is that the assessee's cross objection and the grounds raised therein were not taken into consideration by the Tribunal while allowing the appeal filed by the Revenue by applying the law laid down by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., and that the grounds canvassed in the cross objection ought have

to been given due regard and more particularly because of the decision of the Special Bench of the Tribunal at Delhi in the case of ACIT Vs. Vireet Investment Pvt. Ltd. [reported in 82 Taxmann.com 415].

6. The relevant grounds raised in the cross objection filed by the assessee, which, according to the assessee, have not been dealt with, are as hereunder :

> "……
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> 1.2 The CIT(A) having correctly noted that the investments made in the subsidiary companies did not fetch any exempt income this year, rightly directed them to be excluded for computing disallowance under Section 14A? and
>
> 1.3 The CIT(A) ought to have directed the Assessing Officer to exclude all investments, which had not yielded exempt income for computing disallowance under Section 14A?"

7. Mr.Karthik Ranganathan, learned Standing Counsel for the Revenue – respondent seeks to sustain the order passed by the Tribunal by arguing that the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., has put an end to the controversy and that the view taken by the CIT(A), in his order dated 30.11.2017 has to be necessarily held to be an incorrect view though such a decision was taken by the CIT(A) prior to the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd., which was rendered on 12.2.2018.

8. The learned Standing Counsel for the Revenue has referred to paragraph 40 of the decision in the case of Maxopp Investment Ltd., and submits that the said decision squarely answers the contentions advanced by the assessee in the cross objection filed before the Tribunal.

9. Per contra, Mr.G.Baskar, learned counsel appearing for the appellant – assessee would rely upon the decision of the Tribunal in the assessee's own case for the assessment year 2014-15 in ITA.No. 1483/Chny/2019 dated 29.11.2019 wherein the Tribunal remanded the matter to the Assessing Officer and directed to re-examine the matter, find out, on the basis of the materials filed by the assessee, the investments, which yielded exempt income during the year under consideration and thereafter decide the issue afresh in accordance with law after affording a reasonable opportunity to the assessee. The Tribunal passed such an order of remand by referring to the decision of the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt. Ltd.

10. The larger question would be as to whether the decision of

the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt. Ltd., can be pressed into service after the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. In fact, this legal issue was not specifically canvassed before the Tribunal in the case on hand and this is evident from the impugned order, which recorded the submissions of both the learned counsel for the assessee as well as the Departmental Representative.

11. The learned counsel for the assessee has also relied upon the decisions of the Division Bench of this Court in the case of CIT Vs. Chettinad Logistics Pvt. Ltd. [reported in (2017) 98 CCH 151] and in the case of Redington (India) Ltd. Vs. ACIT [reported in (2016) 97 CCH 219].

12. It is the submission of the learned Standing Counsel for the respondent – Revenue that this Court need not go thus far to take a decision in the matter, as the decision of the Hon’ble Apex Court in the case of Maxopp Investment Ltd., would clearly cover the issue in the case on hand and that the Tribunal rightly applied the decision and allowed the appeal filed by the Revenue.

13. After elaborately hearing the learned counsel on either side, we are of the considered view that a decision has to be arrived at as regards the applicability of the decision of the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt. Ltd., post the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. In fact, in the assessee’s own case for the assessment year 2014-15 where the Tribunal remanded the matter to the Assessing Officer, the Tribunal took note of the decision of the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt. Ltd., and passed such a remand order. We find that the effect of the remand order passed by the Special Bench of the Delhi Tribunal after the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd., has not been specifically decided though the Departmental Representative made certain submissions to the said effect.

14. Hence, we are of the considered view that the Tribunal should take a decision on the above extracted two grounds, which were raised by the assessee in their cross objection and the Tribunal should decide as to the applicability and effect of the remand order of the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt.Ltd., post the decision of the Hon’ble Apex Court in the case of Maxopp Investment Ltd. We leave all the issues open and the assessee as well as the Revenue shall canvass all the points and more so because the decision of the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt. Ltd., was not placed for consideration before the Hon’ble Apex Court while deciding the case of Maxopp

Investment Ltd.

15. For the foregoing reasons, the above tax case appeal is partly allowed, substantial question of law Nos.1 and 2 are held against the assessee and in so far as the third substantial question of law is concerned, the matter is remanded to the Tribunal to consider the effect of the decision of the Special Bench of the Delhi Tribunal in the case of Vireet Investment Pvt. Ltd., post the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai C-Bench.

2.The Deputy Commissioner of Income Tax, Corporate Circle-2(1), Chennai-34.

3.The Commissioner of Income Tax (Appeals)-6 Nungambakkam, Chennai-34.

4.The Assistant Commissioner of Income Tax, Corporate Circle 2(1), 121, M.G.Road, Nungambakkam, Chennai-34.

+1 cc to Mr.G.Baskar,Advocate Sr.No.25991

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