

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 283 of 2019
Date of decision: 20.2.2020

Pr. Commissioner of Income Tax-I, Chandigarh

.. Appellant

v.

Shri Sukhwant Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yogesh Putney, Senior Standing Counsel for the
appellant.

...

AVNEESH JHINGAN, J.

The revenue is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 29.10.2018 passed by the Income Tax Appellate Tribunal, Chandigarh (for short, 'the Tribunal'). Following substantial questions of law have been claimed:

“1. Whether on the facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal is right in law in holding that even if a Company advances loans to its Member(s)/Share-holder(s)/Director(s) holding more than 10% of shares therein, and where admittedly such lending is

not in the usual course of its business, even then, the amounts so advanced, would not be covered under the definition of “dividends” as stated in section 2(22)(e) of the Income Tax Act, 1961 which is clearly contrary to the unambiguous language of the provision?

ii) Whether on the facts and in the circumstances of the case, the Ld. Income Tax Appellate Tribunal is right in law in rejecting the finding of the Commissioner of Income Tax (Appeals)-2, Chandigarh that even though the amounts so received by the Assessee from the company, a major/considerable part thereof being utilized for meeting Miscellaneous Expenses of the Assessee, still such transaction would take the colour of and/or relate to the usual course of business of the company which had transferred the amount?

(iii) Whether on the facts and in the circumstances of the case, the Ld. Income Tax Appellate Tribunal is right in law in upsetting the well-reasoned and cogent findings as contained in the order passed by the Commissioner of Income Tax (Appeals)-2, Chandigarh even though no reasons in respect thereof have been rendered by it?

(iv) Whether on the facts and in the circumstances of the case and in law, the order of Hon'ble ITAT is perverse stating that there is no exempt income during the year whereas in the return of income, the assessee has claimed total exempt income of Rs. 24,45,132/-, hence the ratio of case of M/s

Lakhani Marketing INC ITA No. 970/2008 is not applicable to the case of the assessee?

(v) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in not upholding disallowance of Rs. 11,82,978/- u/s 14A of the Income Tax Act on the ground that disallowance made cannot exceed exempt income without appreciating the fact that there is no such restriction stipulated either in Section 14A of the Income Tax Act or Rule 8D of the Income Tax Rule?

(vi) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in not upholding disallowance of Rs. 11,82,978/- u/s 14A of the Income Tax Act on the ground that disallowance made cannot exceed exempt income without appreciating the fact that applicability of Section 14A or Rule 8D does not depend on earning of income as held by Supreme Court in the case of CIT vs. Rajender Prasad Moody (1978), 115 ITR 519?

(vii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in not upholding disallowance of Rs. 11,82,978/- u/s 14A of the Income Tax Act on the ground that disallowance made cannot exceed exempt income without appreciating the fact that there is no such restriction in Section 14A or in rule 8D and further clarified by CBDT Circular No. 5 of 2014?

(viii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in ignoring the

legislative intent expressed in CBDT's Circular No. 5/2014 dated 11.2.2014, which explicitly states that expenses relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during the F.Y. or not as confirmed by Apex Court in Maxopp Investment Ltd. v. CIT, 91 Taxman.com 154 (SC)?

(ix) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in holding that disallowance u/s 14A cannot be made where there is no exempt income, when Supreme Court has upheld the principles of apportionment and department is in SLP on the same issue in the cases of Moderate Leasing and Capital Services Pvt. Ltd. In ITA No. 102 of 2018, A. Y. 2009-10 and Matrix Cellular Service (P) Ltd. In ITA No. 484 of 2017 and Nilgiri Infrastructure Development Ltd. In ITA No. 135 of 2016 and Instant Holding Ltd. in ITA No. 2168 of 2011 and SLP has also been approved against the decision of Hon'ble Jurisdictional High Court in the case of M/s Vardhman Chemtech Private Ltd. in ITA No. 322/2016?

(x) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in law and fact in following the decision of Hon'ble High Courts whose facts were distinguishable from the assessee, ignoring the principal of apportionment regardless of exempt income laid down by Hon'ble Supreme Court decision in CIT v. Walfori Share and

Stock Brokers P Ltd., 326 ITR 1 (SC) and upheld by the Hon'ble Supreme Court in 91 Taxman.com 154 (SC)?

(xi) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the addition of Rs. 11,82,978/- u/s 14A determined by the AO under rule 8D r.w.s. 14A to apportion interest expenditure incurred to invest in shares and equity instrument in view of the fact that no separate accounts are maintained by the assessee in relation to investments whose income is exempt from tax, and has large borrowed funds ignoring Apex Court decision in 91 Taxman.com 154 (SC)?

(xii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in law and fact in following the decision of Hon'ble High Court in Lakhani Marketing decided following decisions in the case of Hero Cycles Ltd., 323 ITR 204 and CIT v. Winsome Textile Industries Ltd., 319 ITR 204 whose facts are distinguishable from the assessee, ignoring the principal of apportionment laid down by Hon'ble Supreme Court decision in CIT v. Walfori Share and Stock Brothers P. Ltd., 326 ITR 1(SC), which has been confirmed in 91 Taxman.com 154 (SC) and thus legislation relying on Winsome Textiles Industries Ltd. stands superceded?"

The brief facts are that the assessment year involved is 2013-

14. The income tax return was filed claiming deduction under Chapter VI-A of the Act. The case was selected for scrutiny. The Assessing Officer treated

the loan received from M/s Acme Builders Private Limited as deemed dividends and made additions under the head “income from other sources”. Further disallowance under Section 14A of the Act was also made vide order dated 29.1.2016. The first appeal filed was dismissed on 14.12.2016. The Tribunal allowed the appeal vide order dated 29.10.2018, hence the present appeal of the revenue.

In the appeal, it is pleaded that the tax effect is ₹46,91,541/-, however it is argued that the case falls under the exception carved out in para 10(b) of CBDT Circular No.3 of 2018 dated 11.7.2018. The same is reproduced below:

“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

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(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

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From the perusal of the order of the Tribunal, it is not forthcoming that any notification, order, instruction or circular was dealt with/ relied upon by the Tribunal what to talk about the same being held illegal or *ultra vires*. Even otherwise, the Tribunal has no jurisdiction to declare a circular *ultra vires*. In our considered view, the case does not fall in the exception clause.

The appeal is dismissed.

However, the substantial questions claimed are kept open.

Since the appeal is dismissed, the accompanying application is disposed of.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

20.2.2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No