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

INCOME TAX APPEAL NO.1042 OF 2017

The Principal Commissioner of Income Tax-12 ...Appellant
vs.

India Infoline Investment Services Ltd. ...Respondent

Mr. Nirmal Chandra Mohanty for the Appellant.
Mr. Atul K. Jasani a/w Mr. P. C. Tripathi for the Respondent.

CORAM : K. R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATE : 12th OCTOBER 2021

P. C. :

In this Appeal various grounds have been raised and 4 questions of law have been proposed. The 4 questions are as under:

"A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in setting aside the order of CIT(A) and in remanding the issue of disallowance under Section 14A of the Act to the file of the Assessing Officer ?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in concluding that where the funds of a company were more than the investment made in a year, the provisions of Section 14A read with Rule 8D are inapplicable ?

C. Whether on the facts and in the circumstances of *the case and in law, the Hon'ble Tribunal is justified in holding that the funds from short term borrowings are not to be considered while considering long term investments for computing the disallowance for the purpose of Section14A read with Rule 8D ?*

D. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in holding that the investment in a subsidiary company, from which exempt income is earned, is outside the pale of Section14A read with Rule 8D ?"

2. Mr. Mohanty says that question A is a general question and therefore he will not press for it. As regards question B, Mr. Mohanty in all fairness stated that it is covered by the judgment of the Apex Court in *South Indian Bank Ltd. vs. Commissioner of Income Tax*[1]. Mr. Mohanty was pressing for question C and D to be framed as substantial questions of law and was impugning the order passed by Income Tax Appellate Tribunal (hereinafter referred to as "ITAT"). However, we find recorded the following in the impugned order of ITAT:

"It was a common point between the parties that the present appeal of the assessee be decided in the light of the orders of the Tribunal dated 25/7/2014 (supra) and 23/2/2016(supra) in assessees' own case for assessment year 2009-10 and 2010-11 respectively and the matter be restored to the file of AO for consideration afresh in accordance with law, keeping in view aforestated orders of the Tribunal for the assessment year 2009-10 and

1 *2021 SCC Online SC 692*

2010-11.
Accordingly, the impugned order of the learned CIT(A) is set aside and the matter is remanded back to the file of the AO with a direction to reconsider the application of Section 14A of the Act in this year in accordance with law, also in the light of the decision of the Tribunal dated 25/7/2014 (supra) and 23/2/2016 (supra) in assessees own case for the assessment year 2009-10 and 2010-11. Needless to say that the AO shall allow the assessee a reasonable opportunity of being heard before passing an order afresh in accordance with law. We order accordingly."

3. Therefore, Revenue has also agreed, as recorded in the order of ITAT, that the appeal pending before ITAT be decided in the light of the orders of Tribunal dated 25/7/2014 and 23/2/2016 in assesses's own case for the Assessment Year 2009-2010 and 2010-2011 respectively and the matter be restored to the file of Assessing Officer for consideration afresh in accordance with law.

4. In view of the consensus as recorded in the order by ITAT appellant cannot impugn the said order in this appeal. We have also to note that it is not Appellant's case that the order of ITAT wrongly records the consensus made as noted therein.

5. Hence the question of framing any substantial question of law does not arise. Appeal is dismissed.

(AMIT B. BORKAR, J) **(K. R. SHRIRAM, J.)**

RAJESHWARI SUBODH KARVE

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Date: 2021.10.14 14:40:22 +0530