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

INCOME TAX APPEAL NO.1275 OF 2017

The Commissioner of Income tax 9, Aaykar
Bhavan

...Appellant

Versus

M/s. Future Corporate Resources Ltd.

...Respondent

Mr. Tejveer Singh for the Appellant.

Ms. Dinkle H. Hariya for the Respondent.

CORAM : K.R. SHRIRAM &
R.I. CHAGLA, JJ.

DATE : 29 SEPTEMBER, 2021.

(THROUGH VIDEO CONFERENCING)

ORDER :

1. This appeal has been filed in view of the order dated 26th October 2016 passed by the ITAT setting aside order passed by the Principle Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 ("the Act"). The Principal Commissioner of Income Tax ("PCIT") had exercised the powers under Section 263 of the Act on the grounds that the order passed by the Assessing Officer

was erroneous and it was prejudicial to the interest of the revenue.

2. After the assessment order was passed, the PCIT found that the Assessing Officer had failed to examine the interest expenses related to the borrowing made for the investment purposes was a business expenditure allowable under Section 36(1) (iii) or was it an expenditure incurred for earning dividend income allowable under Section 57 (iii) of the Act which is determinant of the applicability of Section 14A to the facts of the case.

3. An order under Section 143 (3) of the Act had been passed on 23rd March 2014 computing the total income of the assessee for AY 2011-12 at a loss of Rs.6,56,21,270/-. According to the PCIT in the assessment order it has been recorded that the assessee was holding investment of Rs.1,15,974.91 lakhs and Rs.1,30,265.91 lakhs at the beginning and at the end of the year, respectively. Income arising from such investment being dividend does not form part of the total income but still the assessee had debited substantial amount as interest in its P & L A/c. In response to the question whether any disallowance was required under Section 14A of the Act r. w. Rule 8D, it was explained by respondent during

the assessment proceedings (a) that the investment had been made by the assessee in its associate and subsidiary companies as a promoter solely and exclusively for purpose and in course of the business as part of business strategy, (b) the intention was not to earn dividend income but to build long term business prospects and increase the efficiency in each division of the sector, (c) out of the total investment appearing in the balance Rs.1,30,265.26 lacs approximately 93% i.e. Rs.1,21,686324 lacs had been made in the associate and subsidiary companies and (d) out of the total revenue of the assessee company of Rs.15,264.23 lacs, revenue from associate and subsidiary companies was Rs.8118.20 lacs, i.e., approximately 53%.

4. According to the PCIT the Assessing Officer failed to make a disallowance of interest under the provisions of Section 14A read with Rule 8 (D) (ii) and therefore order of Assessing Officer was erroneous and prejudicial to the interest of revenue. The PCIT set aside the order of the Assessing Officer with the directions to frame a fresh assessment order. Against this order the respondent preferred an appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT, by an order pronounced on 26th October 2016 set aside the order of

the PCIT passed under Section 263 of the Act.

5. We have heard the counsels and considered the order passed by the PCIT and the order of the tribunal and we see no reason to frame any question of law.

6. Mr. Tejveer Singh in fairness agreed that the law is very clear and in as much as if there are two possible views and the Assessing Officer has chosen one of the possible views then there is no reason to exercise power of revision and revisional powers cannot be exercised for directing a full inquiry to find out if that view taken after an inquiry is erroneous. Moreover, the power of revision can only be exercised where no inquiry as required under the law is carried out and even in case of inadequate inquiry by the Assessing Officer, the order of the Assessing Officer could not be reviewed.

7. In the order of PCIT it is stated “*in paragraph 4.3 of the assessment order, the Assessing Officer has recorded that from the details submitted by the assessee and the explanation given by him, it was observed that assessee had regular business connection with the company in which investment had been made and also there was*

business income to the assessee from the same. Therefore, interest expense debited by the assessee has not been considered for the calculation of disallowance under Section 14A because the same has been incurred for the purpose of business.”

The PCIT therefore agrees that the Assessing Officer has recorded from the details submitted by respondent and the explanation given by respondent that the assessee had regular business connection with the company in which investment has been made and also there was a business income to the assessee from the same. He notes that the Assessing Officer, therefore did not consider the calculation of disallowance under Section 14A the interest expense debited by the assessee because the same has been incurred for the purpose of business. The PCIT though was unhappy with the view of the Assessing Officer, the PCIT himself does not say why it should have been considered for the calculation of disallowance under Section 14A. Even if one assumes that he has, after reading of the order expressed his views, but still the position is two views therefore were possible. Therefore, if one of the two possible views was taken by the Assessing Officer, the PCIT could not have exercised his powers under Section 263 of the Act.

8. Another point which we noticed from the order of PCIT, which has been noted by the ITAT is that the PCIT has not disputed the nature of the investments being strategic investment made for the purpose and in course of the business of the assessee. The PCIT has only looked at the matter from a different legal view on the same set of facts. It was for these reasons, the ITAT had interfered and held that the order passed by PCIT under Section 263 of the Act was not sustainable and accordingly set aside that order.

9. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analyzed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

10. The appeal is devoid of merits and it is dismissed with no order as to costs.

[R.I. CHAGLA J.]

[K.R. SHRIRAM, J.]