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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/131/2019
HALDIA PETROCHEMICALS LIMITED
VS.
COMMISSIONER OF INCOME TAX KOLKATA IV

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 26, 2022.

Appearance:
Mr. Ajoy Gaggar, Adv.
Mr. Hiranmay Gangopadhyay, Adv.
... for appellant
Mr. Soumen Bhattacharjee, Adv.
...for respondent

The Court :- We have heard Mr. Ajoy Gaggar, learned standing Counsel with Mr. Gangopadhyay, learned Advocate for the appellant and Mr. Soumen Bhattacharjee, learned Advocate for the respondent.

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 6th July, 2018 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA No.1533/Kol/2015 for the assessment year 2004-2005. The appeal was admitted on August 22, 2019 to decide the following substantial questions of law:-

(a) For that the Tribunal was not justified in law in directing disallowance of 1% of the appellant's dividend income under Section 14A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") when the appellant's case was that no expenditure was incurred by it in relation to the dividend income and its purported findings in that behalf are arbitrary, unreasonable and perverse.

(b) For that the Tribunal failed to consider the appellant's case that no expenditure was incurred in relation to the dividend income and no amount on account thereof was to be disallowed in computing its taxable income.

(c) For that the Tribunal was not justified in law in not allowing deduction of expenditure of Rs.15,46,24,405/- for the assessment year 2004-05 claimed by the appellant as deferred revenue expenditure.

(d) For that the Tribunal failed to consider that allowance of revenue expenditure on a deferred basis was well recognized by this Hon'ble Court as also by the Hon'ble Supreme Court and the Tribunal should have directed the Assessing Officer to allow the appellant's claim.

(e) For that the said order dated July 06, 2018 in so far as adverse to the appellant is otherwise erroneous on facts and/or in law.

We have heard Mr. Ajoy Gaggar, learned standing Counsel with Mr. Gangopadhyay, learned Advocate for the appellant and Mr. Soumen Bhattacharjee, learned Advocate for the respondent.

The legal issue involved in the instant case is squarely covered by the decision of the Hon'ble Supreme Court in the case of *South Indian Bank Ltd. Vs. Commissioner of Income Tax,* 2021 10 SCC 153. The Hon'ble Supreme Court held proportionate disallowance of interest is not warranted under Section 14A of the Act for investment made in tax free bonds/security which yield tax free dividends and interest to assessee's and in those situations where the interest free own funds available with the assessee exceeds their investment.

The Hon'ble Supreme Court relying upon various decisions concluded that proportionate disallowance of interest is not warranted. The revenue cannot dispute the above legal position and several decisions have been rendered by the Hon'ble Court and this Court even thereafter.

Thus following the said decision, the appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH