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

INCOME TAX APPEAL NO. 214 OF 2018

Pr. Commissioner of Income Tax-14,
Mumbai ….Appellant
V/s.
Godrej Agrovet Ltd. …Respondent

Mr. Suresh Kumar for Appellant.
Mr. Atul K. Jasani for Respondent.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 30th MARCH, 2022

P.C. :

1. The following three substantial questions of law is proposed in the appeal.

QUESTION OF LAW

i. Whether in law and on the facts of the instant case, was the Tribunal right in upholding that provisions of Section 14A read with Rule 8D, that has been introduced with retrospective effect from 01.01.1962?

ii. Whether on law and in the facts of the instant case, was the Tribunal right in deleting the addition of interest disallowed by the AO, who held that the Respondent owns funds used to make exempt investments could have been better utilized to pay back borrowed funds on which interest paid is claimed as deduction?

iii. Whether in law and on the facts of the instant case, was the Tribunal right in confirming the restriction placed by the CIT(A) in administrative expenditure that is contrary to Rule 8D?

2. As regards Question No.1 it is general question and Question No.2 is covered by the judgment of the Hon'ble Suprme Court in ***South Indian Bank Ltd. vs. Commissioner of Income-tax***[1] because the finding is that share capital and reserves were more than the investment made.

3. As regards third substantial question of law proposed, we find that the Tribunal has directed the Assessing Officer to restrict the disallowance to 2% of the total exempt income. This has been done because 2% of the total exempt income earned by the assessee was the disallowance for A.Y. 2002-03, A.Y. 2003-04 and A.Y. 2004-05. The case at hand relates to A.Y. 2010-11. At that time, i.e., during A.Y. 2010-11, Income Tax Rules 8D provided for method for determining amount of expenditure in relation to income not includible in total income. This was inserted by Income Tax (Fifth Amendment) Rules, 2008 w.e.f. 24/03/2008. Therefore, for A.Y. 2010-11 the amount of expenditure must be determined as per Rule 8D. The Income Tax Appellate Tribunal (ITAT) has not discussed in the order impugned as to why this method prescribed under Rule 8D should not be applicable for A.Y. 2010-11. To this extent we will have to remand the matter back to the ITAT to redecide on the amount of expenditure in relation to income not includible in total income.

1 [2021] 130 taxmann.com 178 (SC)

4. The ITAT may dispose this issue as early as possible preferably on or before 31st August, 2022.

5. Appeal disposed.

(N.R. BORKAR, J.) **(K.R. SHRIRAM, J.)**