- Chitra Sonawane

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

INCOME TAX APPEAL NO.218 OF 2018

Pr. Commissioner of Income Tax-14,
Mumbai .. Appellant.
Vs.
M/s Godrej Industries Ltd., Mumbai .. Respondent.

.....

Mr. Suresh Kumar for the appellant.

Mr. P. J. Pardiwalla, Senior Advocate a/w Mr. Jitendra Jain i/b Mr. Atul K. Jasani, Advocate for the respondent.

CORAM : K. R. SHRIRAM &
N.R. BORKAR, J.J.

DATED : 11TH APRIL, 2022.

P.C.

1. Following substantial questions of law are proposed in the appeal.

> *a) Whether in law and on the facts of the instant case, was the Tribunal right in upholding the decision of the CIT(A) in partly confirming the decision of the CIT (A); that is contrary to the provisions of Section 14-A r/w Rule 8-D, that has been introduced with retrospective effect from 1.4.1962.*
>
> *b) 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, in the absence of any evidence that indicated that borrowed funds were not used for the purpose of making investments that yielded exempt income?*

> *c) Whether in the law and on the facts of the instant case, was the Tribunal right in directing to exclude strategic investments while calculating the disallowance under Rule 8 D(2)(iii) of the Rules,*
>
> *d) Whether in law and on the facts of the instant case, was the Tribunal right in upholding the direction of the CIT(A) that the CENVAT credit to the value of closing stock is not to be adjusted u/s 145 of the Act ?*

2. Mr.Suresh Kumar, learned Counsel for the appellant state that *question (d)* proposed has been covered against revenue in earlier years and therefore, would no more be a substantial question of law.

3. As regards remaining questions, the Tribunal has deleted disallowance on account of interest under Rule 8(D)(2)(ii) in toto and so far as disallowance under Rule 8(D)(2)(iii) is concerned, investments made in the sister concerns, 0.5% was disallowed as administrative expenses.

4. Learned Counsel state that in view of ***Maxopp Investment Limited Vs. Commissioner of Income Tax, New Delhi reported in (2018) 91 taxmann.com 154 (SC),*** the Court may remand the matter back to the Tribunal to consider whether in law and in facts of the case, the Tribunal could exclude strategic investments while calculating disallowance under Rule 8 (D)(2)(iii) of the Rules. Ordered accordingly. The Tribunal will also consider whether respondent's

contention that investments made by it in group Companies were made from a strategic perspective as to maintain controlling stake in the said companies and not solely for the purpose of earning any dividend income. If the answer to this, is in affirmative then, whether any expenditure can be apportioned towards earning of such dividend income for the year under consideration and if the amount apportioned should be excluded while calculating the disallowance under Rule 8D(2)(iii) of the Rules.

5. The Tribunal shall also consider the law laid down in ***Maxopp Investment Limited (supra)*** while deciding the issue.

6. We clarify that we have not made any observations on the merits of the case.

7. As regards interest issue mentioned, Counsel state that it is already covered by the Supreme Court Judgment in the case of ***South Indian Bank Ltd. Vs. Commissioner of Income Tax, 2021(438) ITR 1 (SC)***.

8. Appeal disposed accordingly.

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