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

INCOME TAX APPEAL NO.95 OF 2018

Principal Commissioner of Income Tax, Central - 2 ….Appellant
V/s.
Sharekhan Limited ….Respondent

Mr. Suresh Kumar for appellant.
Mr. Hiro Rai a/w. Mr. Subhash Shetty for respondent.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 24th MARCH 2022

P.C.:

1 The following substantial questions of law are proposed in this appeal :

QUESTIONS OF LAW

6.1. Whether on the facts and in the circumstances of the case and in Law, the Hon'ble Tribunal was justified in upholding the order of Ld. CIT(A), and directing the AO to delete the disallowance made by the AO u/s. 14A r.w. rule 8D ignoring the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81, wherein it has been held that the methodology of working of disallowance under Rule 8D of the I.T. Rules, 1962 is mandatory and is applicable from A.Y. 2008-2009?

6.2. Whether on the facts and circumstances of the case and in Law, the Hon'ble ITAT was justified in deleting the addition u/s. 14A r.w. Rule 8D(2)(i) & (ii) while restoring the addition u/s. 14A of the I.T. Act, 1961 r.w. Rule 8D (2)(iii) of the I.T. Rules, 1962 to the file of the AO?

6.3. Whether on the facts and circumstances of the case and in Law, the Hon'ble ITAT ought to have restored the entire addition u/s. 14A r.w. Rule 8D instead of partly restoring the addition u/s. 8D (2)(iii) of the I.T. Rules, 1962 only?

6.4. Whether on the facts and circumstances of the case and in Law, the Hon'ble ITAT was justified in directing the Assessing Officer to treat the loss of Rs.1,92,57,672/- as business loss instead of speculation loss ignoring the fact that *the said loss has arisen out of transaction of shares carried out by assessee company and, therefore, in view of explanation to Section 73 of the I.T. Act, 1961 the said loss was speculation loss?*

2 We have considered the order of the Income Tax Appellate Tribunal (ITAT) pronounced on 24th March 2017 which is impugned in this appeal and we find that the ITAT has arrived at finding on facts. On the issue as to whether the assessee had its own funds or borrowed funds, even the Revenue does not dispute the fact that the assessee had its surplus funds. With this background, we do not see any substantial question of law arising.

3 As regards the proposed question no.4, Mr. Suresh Kumar states that it is already covered and therefore, need not be considered in this appeal.

4 That leaves only the three remaining questions. 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 analysed 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.

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

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

Gauri Gaekwad