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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 308/2022

PR. COMMISSIONER OF INCOME TAX

..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Vipul Agrawal and
Mr. Parth Semwal, Jr. Standing
Counsel.

versus

MS. PNB HOUSING FINANCE LTD

..... Respondent

Through: Mr. S. Krishnan with Mr. Amandeep
Mehta, Advocates.

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Date of Decision: 07th September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL.38912/2022 (for condonation of delay)

Keeping in view the averments made in the present application, the delay of 18 days in re-filing the present appeal is condoned.

Accordingly, this application stands disposed of.

ITA 308/2022

1. Present income tax appeal has been filed challenging the order dated 04th December, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2124/Del/2015 and ITA No. 2810/Del/2015 for the Assessment Year ('AY') 2010-11.



2. The assessee is a subsidiary of the Punjab National Bank and is engaged in the business of retail lending as well as long term finance for construction of homes.

3. Learned counsel for the appellant states that the ITAT has erred in deleting the disallowance made under Section 36(1)(viii) of the Income Tax Act, 1961 ('the Act') by not considering the total receipt of business for the purpose of working out the proportion to be used in calculating the ratio for deduction under the said provision. He further states that the ITAT has failed to appreciate that total business receipts and not any sector specific receipts are the relevant factor for arriving at the quantum of disallowance under Section 36(1)(viii) of the Act.

4. He further states that ITAT has erred in setting aside the disallowance made under Section 14A of the Act holding that since the assessee earned the exempt income from investments held as stock-in-trade, the provision of Section 14A of the Act will apply. He states that the ITAT failed to consider that the provisions of Section 14A of the Act will apply even if the assessee has shown the investment generating the exempt income as stock-in-trade. He states that the provision of Section 14A of the Act does not make any differentiation between expenses incurred on exempt income earned from investments held as stock-in-trade or other forms of exempt income.

5. We have heard the counsel for the parties. As regards, the contention of the appellant with respect to the deletion of disallowance made under Section 36(1)(viii) of the Act, a perusal of the paper book reveals that the ITAT has observed that the said methodology has been adopted by the assessee consistently for last eight years and the same was accepted by Revenue without any objection. In fact, the record reveals that the



Commissioner of Income Tax (Appeals) [‘CIT(A)’] in assessee’s own case for the AYs 1998-99 to 2009-10 has upheld the said deduction made by the assessee. The learned counsel for the appellant admits that no appeal has been filed challenging the said order in assessee’s own case for the said AYs, except the order impugned in the present proceedings. The Supreme Court in ***Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Ltd., [2019] 107 taxmann.com 375 (SC)*** has held that Courts must promote the interest of certainty in tax litigation. According to the Apex Court, there is a significant value which one must attach to observing the requirement of consistency and certainty. It further held that individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty and to detract from those principles is neither expedient nor desirable. In view thereof, a challenge to the deletion of the disallowance made under Section 36(1)(viii) of the Act is not made out.

6. With respect to the challenge of the deletion of the disallowance made under Section 14A of the Act, this issue is no longer *res integra*. It is an admitted fact that the exempt income was earned by the assessee from the investment held by it as stock-in-trade. This issue has been conclusively determined by the Supreme Court in ***Maxopp Investment Ltd. v. CIT, [2018] 15 SCC 523***. In this matter, the Supreme Court was concerned with a batch of appeals which also included a challenge to the judgment of the Punjab and Haryana High Court reported in ***CIT v. State Bank of Patiala [2017] 391 ITR 218 (P&H)*** and the facts of the said case are *para materia* to the case in hand. In the case of State Bank of Patiala, the AO restricted the disallowance to the amount which was claimed as exempt income by



applying the formula contained in Rule 8-D and holding that Section 14A of the Act would be applicable. The CIT(A) issued a notice of enhancement under Section 251 of the Act and disallowed the entire expenditure claimed by the assessee therein instead of restricting the disallowance to the amount which was claimed as exempt income. The ITAT set aside the order of the AO as well as CIT(A). The High Court upheld the order of the ITAT and dismissed the appeal filed by the Revenue. The Supreme Court after deliberating on the object and purpose of Section 14A, conclusively held that in cases where shares are held by assessee as stock-in-trade, the dividend earned on the said shares is incidental and would not attract the provisions of Section 14A of the Act. In this regard, the following paragraphs of the judgment are apposite:-

“ 49. We note from the facts in State Bank of Patiala case that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8-D of the Rules and holding that Section 14-A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court.

50. It is to be kept in mind that in those cases where shares are held as "stock-in-trade", it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them



to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.”

7. The judgment of the Punjab and Haryana Court in the case of State Bank of Patiala was also cited with approval by the Supreme Court in a subsequent judgment reported as ***South Indian Bank Ltd. v. Commissioner of Income-tax*** reported in [2021] 438 ITR 1 (SC) and held as under:-

“25. ...The Punjab and Haryana High Court, in the case of Pr CIT v. State Bank of Patiala [2017] 88 taxmann.com 667/393 ITR 476 (Punj. & Har.), while advertng to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock-in-trade, and all income received on such shares and securities must be considered to be business income. That is why Section 14A would not be attracted to such income.”

(Emphasis Supplied)

7. The law settled by the aforesaid judgments of the Supreme Court is squarely applicable facts of the present case as there is no dispute that the exempt income was earned from stock-in-trade.



8. Keeping in view the aforesaid facts and enunciation of law, this Court is of the view that no substantial question of law arises for consideration in the present appeal and accordingly, the same is dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 07, 2022/msh

