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ITA/7/2020
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX - 2, KOLKATA
-Versus-
CENTURY ENKA LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 27th February, 2023

Appearance :
Mr. Smita Das De, Adv.
...for the appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunhunwala, Adv.
Ms. Swapna Das, Adv.
...for the respondent..

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 18th May, 2016 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.665/Kol/2012 and ITA No.325/Kol/2012 for the assessment year 2008-09.

The appeal was admitted on 12th December, 2019 on the following substantial question of law:

"(i) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal erred in law in holding that the assessee has sufficient own funds, expenditure by way of interest are not to be taken in account

by calculating the disallowance under section 14A read with Rule 8D(2) (ii) of the Income Tax Act, 1961?

(ii) Whether the assessee is entitled to claim the left over portion of depreciation of Rs 9,02,49,544/- being the carry forward figure from the previous year under section 32(1) (iia) of the Income Tax Act, 1961?"

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel assisted by Mr. Pratyush Jhunjhunwala and Ms. Swapna Das, learned advocates appearing for the respondent/assessee.

So far as the substantial question of law (ii) is concerned, the same issue arose in the assessee's own case for the assessment year 2006-07 in ITA/19/2015 and by judgment dated 27th February, 2023 the appeal filed by the revenue is dismissed. Thus, following the said decision, the substantial question of law (ii) is answered against the revenue.

With regard to the substantial question of law (i) is concerned, the learned Tribunal after taking note of the factual position found that the assessing officer has not examined the accounts of the assessee and there is no satisfaction recorded by the assessing officer about the correctness of the claim of the assessee and without doing so, he has invoked Rule 8D(2) (ii) of the Income Tax Rules which is

impermissible in law. Furthermore, the learned Tribunal had perused a chart which was produced by the assessee before the learned Tribunal setting out the financial position of the assessee. From the said chart the learned Tribunal found that the assessee had sufficient own funds which are several times more than the investments made by the assessee and, therefore, it can be concluded that the borrowed funds have not been utilised for the purpose of making investments. After recording such a factual position, the learned Tribunal rightly held that the assessing officer could not have invoked Rule 8D(2)(ii) of the Income Tax Rules. This Court had also occasion to consider the similar issue in the case of Commissioner of Income Tax (Large Tax Payers Unit) Kolkata Vs. M/s. Century Plyboards (I) Ltd., reported in 2022 (9) TMI 1040 - Calcutta High Court wherein the Court after taking note of this decision in the case of Kesoram Industries Ltd. Vs. Principal Commissioner of Income Tax, reported in (2022) 441 ITR 648 (Cal) and the decision of the Hon'ble Supreme Court in South Indian Bank Ltd. Vs. Commissioner of Income Tax, reported in (2021) 438 ITR 1 (SC) dismissed the appeal filed by the revenue. The operation portion of the judgment is as follows :

"13. On going through the order passed by the Tribunal, we find that the explanation submitted by the assessee while framing the assessment proceeding was

rejected by the assessing officer without adducing any reasons nor any defect was pointed out by the assessing officer at the time of assessment and straightway the assessing officer applied the machinery provision under Rule 8D of the Income tax Rules, 1962. Furthermore, on facts, the learned tribunal found that the assessee had sufficient funds and an inference can be drawn that the investment has been made out from the funds of the assessee. In the case of *Kesoram Industries Ltd. vs. Principal Commissioner of Income Tax* **[2022] 441 ITR 648 (Cal)** the Court took into consideration the decision of the Hon'ble Supreme Court in *Maxopp Investment Ltd. vs. CIT* **[2018] 402 ITR 640 (SC)** and held as follows :

"Two important issues have been pointed out in the aforementioned decision. Firstly that the provisions of section 14A has to be interpreted, particularly, the words that "in relation to the income" that does not form of total income. Therefore, it was held that the principle of apportionment of expenses comes into play as that is the principle which is incorporated in section 14A of the Act. With regard to as to how the power under section 14A(2) read with rule 8D of the Rules could be invoked it was pointed out that the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee suo motu disallowance under section 14A was not correct and it will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In any event, the Assessing Officer will have to record its satisfaction to the said effect.

...

We also take note of the decision of this Court in the case of CIT v. Ashish Jhunjhunwala reported in [2015] (12) TMI 905 (Cal), and the decision in Pr. CIT v. Britannia Industries Limited I.T.A./45/2017 dated July 19, 2018. It was pointed out that the assessee has to make a claim (including a claim that no expenditure was incurred) with regard to the expenditure incurred for earning income which is not chargeable to tax. Such a claim has to be examined by the Assessing Officer and only if an objective satisfaction is arrived at by the Assessing Officer that the claim made by the assessee cannot be accepted, the Assessing Officer can then proceed to apply computation mode as provided in rule 8D(2) of the Rules."

14. The decision of the Hon'ble supreme Court in South Indian Bank Ltd. vs. Commissioner of Income Tax [2021] 438 ITR 1(SC) is also in aid of the case of the assessee as the tribunal has recorded specific finding that own funds were available with the assessee. The relevant paragraphs are quoted hereunder :

"27. The aforesaid discussion and the cited judgements advise this Court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of the Income-tax Act for investments made in tax-free bonds/securities which yield tax-free dividend and interest to the assess-banks in those situations where, interest-free own funds available with the assessee, exceeded their investments. With this conclusion,

we unhesitatingly agree with the view taken by the learned Income-tax Appellate Tribunal favouring the assessee.

28. The above conclusion is reached because nexus has not been established between the expenditure disallowed and earning of exempt income. The respondents as earlier noted, have failed to substantiate their argument that the assessee was required to maintain separate accounts. Their reliance on Honda Siel (supra) to project such an obligation on the assessee, is already negated. The learned counsel for the Revenue has failed to refer to any statutory provision which obligate the assessee to maintain separate accounts which might justify proportionate disallowance."

In the light of the above factual and legal position, the substantial question of law (i) is also required to be answered against the revenue.

In the result, the appeal [ITA/7/2020] filed by the revenue stands dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

