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

INCOME TAX APPEAL NO. 181 OF 2018
ALONGWITH
INCOME TAX APPEAL NO. 848 OF 2017

The Commissioner of Income Tax – 9 ….Appellant

V/s.

Grindwell Norton Ltd. …Respondent

Mr. Suresh Kumar for Appellant.
Mr. P.J. Pardiwalla, Senior Advocate a/w Mr. Jitendra Jain i/b Mr. Atul K. Jasani for Respondent.

CORAM : K.R. SHRIRAM &
M.M. SATHAYE, JJ.
DATED : 7th JUNE 2023

P.C. :

1. The following three substantial questions of law are proposed by the Revenue in both appeals.

<u>SUBSTANTIAL QUESTION OF LAW</u>

a. Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law in directing the AO to allow the depreciation on intangible assets totally ignoring the fact that the independent enquiries conducted by the AO proved the ineligibility of the assessee to claim such depreciation as per provisions of section 32 of the I.T. Act ?

b. Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law in restricting the disallowance made under section 14A of the Income Tax to the extent of 2% of the dividend income ?

c. Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT has erred in deleting the addition made by the AO on account of prepayment of deferred sales tax liability treating the same as capital receipt ignoring the findings of the AO that assessee had received prepayment of deferred sales tax liability, which is a clearly a revenue receipt ?

2. As regards question (a) is concerned, Mr. Suresh Kumar in fairness agreed that it would be covered by the judgment of the Hon'ble Apex Court in ***Commissioner of Income Tax vs. SMIFS Securities Ltd.***[1]. In fact, the Division Bench of this court in ***Commissioner of Income Tax - 2 vs. Birla Global Asset Finance Co. Ltd.***[2] following *SMIFS Securities Ltd.* (supra) had held that the contention of the Revenue is that intangible assets like business and commercial brand equity are goodwill on which depreciation is not allowable is not correct.

3. As regards question (c) is concerned, the same is also covered by the judgment of the Hon'ble Apex Court in ***Commissioner of Income Tax – 6, Mum. vs. Balkrishna Industries Ltd.***[3] where the Hon'ble Apex Court upheld the view taken by the Division Bench of this court that the Assessing Officer was not correct in treating the amount saved by the assessee while pre-paying the deferred sales tax liability as income, by applying the provisions of Section 41 of the Income Tax Act, 1961 (the Act).

4. As regards question (b) is concerned, the case at hand relates to Assessment Year 2007-08. The Tribunal in the impugned order has relied upon order of the Tribunal for Assessment Year 2006-07 in assessee's own case wherein disallowance was confirmed at 2% of the dividend income. Relying on the order of the Tribunal for Assessment Year 2006-07, the ITAT

1 [2012] 348 ITR 302 (SC)
2 [2014] 41 taxmann.com 262 (Bombay)
3 [2017] 88 taxmann.com 273 (SC)

in the impugned order has held that the disallowance on account of expenses under Section 14A of the Act should be restricted to 2% of the dividend income. The ITAT also clarifies that the disallowance with regard to interest should be made after excluding those mutual funds which are debt funds.

5. As regards Income Tax Appeal No. 181 of 2018 is concerned that related to Assessment Year 2009-10 relying on the judgment of this court in ***CIT vs. Reliance Utilities and Power Ltd.***[4] and ***HDFC Bank Ltd. vs. DCIT***[5] the Tribunal, after referring to the Balance Sheet of respondent had come to a conclusion that the Share Capital plus Reserves and Surplus amount of Rs.318.21 Crores are in excess of the investment of Rs.41.65 Crores and that point indicated that sufficient interest free funds were available to cover the level of investment in question and therefore, the presumption would arise that such investments have been made out of non interest bearing funds. In fact, the Hon'ble Apex Court in ***South Indian Bank Ltd. vs. Commissioner of Income Tax***[6] has also confirmed the position that when interest free own funds available with the assessee exceeded their investments, it would be presumed that investments were made out of assessee's own funds and proportionate disallowance was not warranted under Section 14A of the Act.

4 313 ITR 340 (Bom)
5 383 ITR 529 (Bom)
6 [2021] 130 taxmann.com 178 (SC)

6. Therefore, we find no fault with the order of the Tribunal. The entire issue is fact based. The Tribunal having come to the factual conclusion on the basis of materials on record, no question of law arises. In the circumstances, we see no reason to interfere.

7. Both appeals dismissed.

(M.M. SATHAYE, J.) **(K.R. SHRIRAM, J.)**