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

+ **ITA 196/2024**

PR. COMMISSIONER OF INCOME TAX -7,
DELHI

.....Appellant

Through: Mr Puneet Rai, SSC, Mr Ashvini
Kumar and Mr Rishabh Nangia, SCs
and Mr Nikhil Jain, Advocate.

Versus

PUNJAB NATIONAL BANK

.....Respondent

Through: Mr S Krishnan and Mr Harshit
Chauhan, Advocates.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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06.12.2024

CM No.18153/2024 (for condonation of delay)

1. There is an inordinate delay in filing the present appeal, however, the learned counsel appearing for the Assessee submits that the issues raised are covered in favour of the Assessee. Moreover, the learned counsel appearing for the Revenue does not seriously object to condonation of delay in filing the appeal. Accordingly, the application is allowed.

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2. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*), impugning an order dated 09.01.2019 passed by the Income Tax Appellant Tribunal (hereafter *the ITAT*) in ITA No.4722/Del/2012 (Assessee's appeal) and in ITA No.4718/Del/2012 (Revenue's appeal).



3. The Respondent (hereafter *the Assessee*) filed its return of income for assessment year (AY) 2008-09 declaring an income of ₹2415,70,59,293/-. The Assessing Officer (AO) assessed the said income at ₹3636,29,03,943/-. A tabular statement setting out the additions made by the AO to the Assessee's declared income is set out below:

S. No.	Particulars	Amount (Rs.)
1.	Loss on shifting of securities from AFS/HFT category to HTM category	18,41,00,000
2.	Addition contribution made to PNB Employees' Pension Fund Trust	722,21,00,000
3.	Disallowance under section 14A	80,38,00,000
4.	Deduction under section 36(1)(viii)	57,45,97,786
5.	Depreciation on goodwill	3,45,00,000

4. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [hereafter *the CIT(A)*] which was partly allowed by an order dated 29.06.2012. The learned CIT(A) sustained the addition under Section 14A of the Act to the extent of ₹7,54,00,000/-. The learned CIT(A) also held that the deduction under Section 36(1)(viii) of the Act was allowable to the Assessee and directed the AO to verify the Assessee's computation.

5. The learned CIT(A) also deleted certain additions on account of loss in shifting of securities as well as the deduction claimed by the Assessee in respect of contributions to PNB Employee's Pension Fund.

6. The Revenue preferred an appeal to the extent that the learned CIT(A) had deleted the additions made by the AO. The Assessee also filed an



appeal before the learned ITAT being aggrieved by the decision of the learned CIT(A) to the extent the learned CIT(A) has sustained the disallowance under Section 14A of the Act as well as the learned CIT(A)'s direction to remand the matter to the AO for determination of the deduction allowable under Section 36(1)(viii) of the Act.

7. The learned ITAT passed the impugned order dated 09.01.2019 partly allowing the Assessee's appeal and deleting the disallowance under Section 14A of the Act to the extent the same was sustained by the learned CIT(A). Insofar as Revenue's appeal is concerned, the same was dismissed.

8. The Revenue has projected the following questions in this appeal for consideration of this court:

- “a. Whether in the facts and circumstances of the case and in law, ITAT erred in deleting the addition of Rs.80,38,00,000/- made under section 14A IT Act read with rule 8D of the IT Rules without appreciating the fact that the assessee earned exempt income of Rs.67,77,69,486/- during the previous year?
- b. Whether in the facts and circumstances of the case and in law, ITAT erred in deleting the addition of Rs.18,4,100,000/- made on account of loss on shifting of securities from AFS/HFT category to HTM category ignoring the fact that the losses are notional and are not allowable.
- c. Whether in the facts and circumstances of the case and in law, ITAT erred in allowing deduction of Rs.722,21,00,000/- credited to PNB Employees' Pension Fund under section 43B of the IT Act even when the amount was not payable as per terms and conditions of the pension fund?
- d. Whether in the facts and circumstances of the case and in law, ITAT erred in holding that excess of liabilities over assets of amalgamating company can legally be automatically classified as goodwill in the hands of amalgamated company?



- e. Whether in the facts and circumstances of the case and in law, ITAT erred in allowing deduction under Section 36(1)(viii) to the assessee ignoring the fact that the assessee did not create any special reserve till the approval of the accounts by its AGM, but created reserve after two years?

9. The first four questions, as framed, relate to issues that are also subject matter of ITA No.193/2024 in respect of AY 2009-10. The said appeal has been dismissed by a separate order passed today. For the sake of brevity, we are not reproducing the reasons for declining to admit the present appeal on the first four questions. The reasoning as set out in the order dismissing the ITA No.193/2024 may be read as part of the present order as well.

10. Insofar as fifth question is concerned, we are of the opinion that the same does not arise in the present appeal.

11. The learned counsel appearing for the Assessee submits that the Assessee had made a claim under Section 36(1)(viii) of the Act by filing a revised return, which was rejected on the ground that the Assessee could not have made the claim at a belated stage. The Assessee challenged the said decision before the learned CIT(A). The learned CIT(A), accepted the Assessee's claim under Section 36(1)(viii) of the Act and rejected the AO's reasoning that such a claim could not be made by filing a revised return. However, the learned CIT(A) remanded the matter to the AO for the purpose of quantifying the said claim.

12. The Revenue was not aggrieved by the said decision. However, the Assessee being aggrieved by the direction to remanding the matter to AO for quantification, preferred an appeal before the learned ITAT. The learned



ITAT confirmed the direction of the learned CIT(A) and did not accede to the Assessee's challenge against the remand to the AO for the purposes of quantification of the allowance.

13. Thus, the Revenue cannot be aggrieved by the decision of the learned ITAT in regard to the aforesaid issue. No substantial question of law arises on this count as well.

14. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 06, 2024

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[Click here to check corrigendum, if any](#)