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

\+ ITA 220/2024

PR. COMMISSIONER OF INCOME TAX -7, DELHI .....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar and Mr. Rishabh Nangia, JSCs.

versus

PUNJAB NATIONAL BANK .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **22.11.2024**

CM APPL. 23124/2024 (Condonation of delay)

1. This is an application filed by the Revenue seeking condonation of delay of 1766 days in filing the present appeal.

2. Mr. Puneet Rai, the learned counsel appearing for the Revenue submits that the period of delay in filing of the appeal as mentioned in the application, is *sensu stricto* not correct. The appeal was initially filed by the earlier counsel through his ID on 29.05.2019.

3. Concededly, the said filing was also beyond the period as available for filing the appeal. According to the Revenue, the impugned order dated 09.01.2019 passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) was received on 31.01.2019. Thus, the appeal was required to be filed on or before 31.05.2019.

4. There has been an abnormal delay in re-filing the appeal, which the Revenue claims is on account of several reasons including on account of change of counsel.

5. Although, the reasons as set out in the application are not persuasive. However, the learned counsel for the parties state that the issue on merits is also covered and therefore, the appeal may be disposed of, on merits.

6. Considering the said contentions, we allow this application and condone the delay in re-filing.

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7. The Revenue has filed the present appeal impugning an order dated 09.01.2019 passed by the learned ITAT in ITA No. 2469/Del/2014 in respect of the assessment year (AY) 2010-11.

8. The Revenue has projected the following questions of law:

> "a) Whether in the facts and circumstances of the case and in law, ITAT erred in deleting the addition of Rs. 171,24,78,793/- made under section 14A of the Act read with rule 8D of the IT Rules without appreciating the fact that the assessee earned exempt income of Rs. 412,83,02,299/- during the previous year?
>
> b) Whether in the facts and circumstances of the case and in law, ITAT erred in holding that section 14A of the IT Act was not applicable to the assessee?"

9. In the present case, the respondent (hereafter *Assessee*) had filed its return of income, which was scrutinized and processed under Section 143(3) of the Act. The Assessing Officer (AO) had assessed the Assessee's income at ₹62,73,27,10,417/- and made several additions including disallowance of ₹1,71,24,78,793/- under Section 14A of the Act.

10. The AO found that the Assessee had earned income to the extent of ₹4,12,83,02,299/- from dividends and other incomes, which were exempted from tax. Thus, according to the AO, the provisions under Section 14A of the Act were applicable.

11. It was the Assessee's case that no further disallowance under Section 14A of the Act could be made as there was no expenditure, which could be held to be incurred for the purpose of earning exempt income. It was also contended by the Assessee that it held the securities as a stock in trade and therefore, the income earned by it is chargeable to tax under the heads "Income from Business or Profession".

12. It was also contended that since it held the securities as its stock in trade. It could not be held that the same was for the purposes of earning any exempted income.

13. However, the AO did not accept the said contention. The AO held that the provisions of Section 14A of the Act refers to a category of income, which does not form a part of the total income as declared by the Assessee. The AO held that the allowability of the expenditure did not depend on direct or incidental receipt of income as the expression used in Section 14A of the Act is "in relation to income" and it does not distinguish between a directly earning exempt income or exempt income that is incidental thereto.

14. The Assessee appealed the said decision before the learned Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*]. The learned CIT(A) following its earlier decision in respect of the AY 2009-10 sustained an addition to the extent of ₹16,26,96,795/- under Rule 8D(2)(iii) of the Income Tax Rules, 1962. However, the addition to the extent of ₹1,54,97,80,997/- was deleted.

15. The Revenue appealed the said decision before the learned ITAT. However, the learned ITAT did not sustain the said appeal following the decision of the Supreme Court in ***Maxopp Investment Ltd. v. CIT: (2018) 91 taxman.com 154***. The relevant extract of the impugned order is set out

below:

"8. We have carefully perused the decision in the case of Maxopp Investment Ltd versus CIT (2018) 91 taxman.com 154 (SC) wherein the Hon'ble Apex Court considered two cases wherein the question of predominant intent of investment in shares was pleaded, though on different facts, on the ground that the objective of investing in shares was not to earn the dividend income, but to either retain controlling interest over the company in which the investment was made or to earn the profit from trading in shares. The question was whether the disallowance under section 14A of the Act could be invoked in the cases where exempt income was earned from shares held as "trading assets" or "stock in trade". The first case relates to Maxopp investment Ltd and the second case relates to the case of State Bank of Patiala. In the case of Maxopp investment Ltd., the assessee company is in the business of finance, investment and was dealing in shares and securities; that they held the shares and securities, partly as investments on the "capital account" and partly as "trading assets" for the purpose of acquiring and retaining control over its group companies, primarily Max India Ltd.; and that the profits resulting on the sale of shares held as trading assets were duly offered to tax as business income of the assessee. In the case of State Bank of Patiala the assessee has exempt income in the form of dividend was earned by the bank from securities held by as stock in trade. The Hon'ble Supreme Court was considering the question that has arisen under varied circumstances where the shares/stocks were purchased by a company for the purpose of gaining control over the said company or as "stock in trade", though incidentally income is also generated in the form of dividends as well.

9. It was argued before the Hon'ble Apex Court that though incidentally income was also generated in the form of dividends, the dominant intention for purchasing the shares was not to earn the dividend income but to acquire and retain the controlling business in the company in which shares were invested, or for the purpose of trading in the shares as business activity. After considering the entire case law on this aspect in the light of the peculiar facts involved in both the matters, the Hon'ble Apex Court vide paragraph No. 39 and 40 held as follows:-

39) In those cases, where shares are held as stock-in-trade, *the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.*

40) We note from the facts in the State Bank of Patiala cases 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 8D of the Rules and holding that section 14A 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 the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. 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*.

10. It is, therefore, clear from the above observations of the Hon'ble Apex Court that depending upon the facts of each case, the expenditure incurred in acquiring the shares will have to be apportioned. Hon'ble Apex Court held that the Tribunal and the Hon'ble High Court of Punjab and Haryana arrived at a correct conclusion by setting aside the disallowance under section 14A of the Act in respect of the dividend earned on the shares held as stock in trade, because such shares were held during the business activity of the assessee and it is only by a quirk of fate that when the investee company declared dividend, those shares were held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits.

11. Hon'ble Apex Court made clear distinction of this case from the case of Maxopp investment Ltd where the assessee knew that whenever dividend would be declared by the investee company such dividend would necessarily be earned by the assessee and assessee alone, and it would be in the common knowledge of the assessee that such shares would generate dividend income as well as and when such dividend income is generated that would be earned by the assessee only. Hon'ble Apex Court in unequivocal terms held that in contrast, where the shares are held as stock in trade, this may not be necessarily a situation and the main purpose was to liquidate those shares whenever the share price goes up in order to earn profits. Hon'ble Apex Court, therefore, while rejecting the theory of dominant purpose in making investment in shares- whether it was to acquire and retain controlling interest in the other company or to make profits out of the trading activity in such shares - clearly made a clear distinction between the dividend

earned in respect of the shares which were acquired by the assessee in their exercise to acquire and retain the controlling interest in the investee company, and the shares that were purchased for the purpose of liquidating those shares whenever the share price goes up, in order to earn profits. It is, therefore, clear that though not the dominant purpose of acquiring the shares is a relevant for the purpose of invoking the provisions under section 14 A of the Act, the shares held as stock in trade stand on a different pedestal in relation to the shares that were acquired with an intention to acquire and retain the controlling interest in the investee company.

12. Further, it is brought to our notice that in assessee's own case in ITA No.1519/Del/2016 and 7106/Del/2017 for the assessment year 2012-13, a coordinate bench of this Tribunal considered the arguments on either side and reached the conclusion that, insofar as the assessee bank is concerned section 14A of the Act has no application in view of the above law laid down by the Hon'ble Apex Court in the case of Maxopp investments Ltd, (supra).

13. We, therefore, while respectfully following the above decision, hold that no addition in case of the assessee under section 14-A is sustainable. Hence, ground of appeal of assessee is allowed and the ground of appeal of the Revenue is dismissed."

16. The learned counsel appearing for the Revenue submits that the issue involved is also covered by the decision of the Supreme Court in ***South Indian Bank Limited v. CIT : (2021) 10 SCC 153***.

17. In view of the above, no substantial question of law arises in the present appeal.

18. Accordingly, the present appeal is dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2024

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Click here to check corrigendum, if any