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

\+ ITA 908/2019

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC with Ms. Deeksha Gupta & Mr. Pratyaksh Gupta, Advs.

versus

NATIONAL HOUSING BANK ..... Respondent

Through: Mr. Rohit Jain & Mr. Aniket D. Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **19.02.2024**

1. The appellant has approached this Court seeking to question the correctness of the view taken by the Income Tax Appellate Tribunal ["**ITAT**"] as embodied in its judgment dated 28 March 2019. The appellant has in this appeal proposed the following questions of law:

2.1 Whether on the facts and circumstances of the case the ITAT is legally justified in deleting the disallowance of INR 24,08,99,985/- by invoking the provision of Section 14A of the Income Tax Act, 1961 ["**Act**"] read with Rule 8D of the Income Tax Rules, 1962 ["**Rules**"]?

2.2 Whether on the facts and circumstances of the case the ITAT has erred in deleting the disallowance by invoking the provision of Section 14A of the Act read with Rule 8D of the Rules to allow the incurred expenditure in order to earn the exempt income?

2.3 Whether on the facts and circumstances of the case the ITAT was justified in deleting the addition of INR 40,44,605/- on account of depreciation claimed by the assessee on office premises consisting of office building and land by ignoring the provision of Section 32(1) of the Act without considering the segregation value of land and building of the office premises?

2.4 Whether on the facts and circumstances of the case the ITAT was justified in deleting the addition of INR 38,27,33,047/- on account of advance received from Government of India adjusted against foreign exchange losses on USAID borrowings by ignoring the provision of Section 145 of the Act as the mercantile system of accounting followed by the assessee, and the said amount ought to be taxed in this year under consideration?

2. Insofar as questions 2.1 and 2.2 are concerned, Mr. Bhatia, learned counsel, fairly concedes that the issues raised therein would stand answered against the Revenue by the judgment rendered in **Principal Commissioner of Income Tax vs. Era Infrastructure (India) Ltd.** [2022 SCC OnLine Del 2157].

3. Having gone through the impugned judgment we are of the opinion that proposed question 2.4 raises no substantial issue which would merit consideration.

4. That only leaves us to deal with question 2.3 with Mr. Bhatia, learned counsel, contending that the land upon which the office building was constructed would have to be segregated for the purposes of evaluating the depreciation liable to be claimed in terms of Section 32(1) of the Act. He had also placed for our consideration the

judgment of the Supreme Court in **Commissioner of Income Tax vs Alps Theatre** [(1967) 65 ITR 377].

5. However, Mr. Jain, learned counsel appearing for the assessee, submits that the office premises had been taken on lease and thus the judgment in *Alps Theatre* would have no application. It was also his submission that the leased premises formed a part of the "*block of assets*" which had been treated identically in the previous years.

6. In view of the aforesaid, and following the principles of consistency, we find no justification to interfere with the view expressed by the ITAT.

7. Consequently, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 19, 2024/kk