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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 01.09.2025

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ITA 279/2025, CM APPL. 48411/2025

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC, Mr. Anant Mann and Mr. P. Gupta, JSCs.

versus

PVR LTD

.....Respondent

Through: Mr. Salil Kapoor, Ms. Soumya Singh, Mr. Sumit Lalchandani, Ms. Ananya Kapoor, Mr. Utkarsa Kumar Gupta, Advs.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO , J. (ORAL)**

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act), lays a challenge to an order dated 07.11.2023 passed by the Income Tax Appellate Tribunal (ITAT) in appeal filed by the respondent being ITA No. 2143/De1/2011 which pertains to Assessment Year 2007-08.

2. Suffice to state that the grievance of the respondent has been noted by the Tribunal in paragraph 2 of its order, and in paragraph 3 onwards it has stated as under:

“3. Ground Nos. 1 to 4 relates to the issue whether Entertainment tax collected and retained by assessee as incentive/ subsidy given by state Governments on account of development of new Multiplexes in the state is capital or revenue receipt.”



3. The substantial questions of law proposed in this appeal by the Revenue appellant are the following:

2.1 Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT is justified in taking into consideration that Entertainment Tax received by the assessee Rs. 9,05,84,001/- is capital in nature?

2.2 Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT is justified to allow the expenditure on account of ESOP and ESPS, which is contingent and notional in nature under section 37(1) of the Income-tax Act, 1961

2.3 Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT is justified in considering that Rule 8D is not applicable for the Assessment Year 2007-08 and also allowed disallowance made Rs.6,40,823/- by Assessing Officer u/s 14A read with rule 8D?

2.4 Whether on the facts and in the circumstances of the case and in law, the Ld. ITAT is justified in stating that the disallowance on account of depreciation u/s 43(1) of the Income-tax Act, 1961, disallowance of ESOP and ESPS expenses and disallowance u/s 14A of the Income Tax Act, 1961 is not be considered for the computation of book profit u/s 115JB of the Income tax Act, 1961?

2.5 Whether on the facts and in the circumstances of the case, the order passed by the Ld. ITAT is perverse in law as well as on fact in respect of the items referred to in the questions herein above?

4. Mr. Ruchir Bhatia, learned Senior Standing Counsel for the appellant fairly states in so far as the substantial question of law in para 2.1 is concerned, that the same is covered against the Revenue in favour of the respondent by the judgment of the Supreme Court in the case of ***Commissioner of Income Tax-1, Kolhapur vs. M/s Chaphalkar Brothers, Pune: 2017 INSC 1198*** as followed by this Court in ITA nos. 113, 115, 116 and 117 of 2025 dated 29.04.2025, ***The Principal Commissioner of Income***



Tax Central-1 vs. PVR Ltd. NC: 2025:DHC:3026:DB, wherein paragraph 14, it has been held that the entertainment tax subsidy must be held to be capital in nature. The relevant paragraph 12 onwards in above four ITAs of the judgment of this Court reads as under :

“12. The appeal preferred by the Revenue against the decision in CIT v. Chapalkar Brothers (supra) was dismissed by the Hon’ble Supreme Court in Commissioner of Income Tax-1, Kolhapur v. M/s Chaphalkar Brothers Pune: 2017 INSC 1198. The Supreme Court referred to its earlier decision in CIT v. Ponni Sugar and Chemicals Limited : (2008) 9 SCC 337 and observed as under:-

“What is important from the ratio of this judgment is the fact that Sahney Steel was followed and the test laid down was the “purpose test”. It was specifically held that the point of time at which the subsidy is paid is not relevant; the source of the subsidy is immaterial; the form of subsidy is equally immaterial. Applying the aforesaid test contained in both Sahney Steel as well as Ponni Sugar, we are of the view that the object, as stated in the statement of objects and reasons, of the amendment ordinance was that since the average occupancy in cinema theatres has fallen considerably and hardly any new theatres have been started in the recent past, the concept of a Complete Family Entertainment Centre, more popularly known as Multiplex Theatre Complex, has emerged. These complexes offer various entertainment facilities for the entire family as a whole. It was noticed that these complexes are highly capital intensive and their gestation period is quite long and therefore, they need Government support in the form of incentives qua entertainment duty. It was also added that



government with a view to commemorate the birth centenary of late Shri V. Shantaram decided to grant concession in entertainment duty to Multiplex Theatre Complexes to promote construction of new cinema houses in the State. The aforesaid object is clear and unequivocal. The object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. This being the case, it is difficult to accept Mr. Narasimha's argument that it is only the immediate object and not the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. We hasten to add that the object of the scheme is only one - there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant, as has been held in both Ponni Sugar and Sahney Steel."

13. The Supreme Court has further proceeded to observe as under:-

"Since the subsidy scheme in the West Bengal case is similar to the scheme in the Maharashtra case being to encourage development of Multiplex Theatre Complexes which are capital intensive in nature, and since the subsidy scheme in that case is also similar to the Maharashtra cases, in that the amount of entertainment tax collected was to be retained by the new Multiplex Theatre Complexes for a period not exceeding four years, we are of the view that West Bengal cases must follow the



judgment that has been just delivered in the Maharashtra case.”

14. Undisputedly, the purpose of the Scheme in the present case is also to encourage the development of the multiplex theatre complexes, which are capital intensive in nature. Thus, the questions sought to be raised are squarely covered in favour of the Assessee by the decision of the Supreme Court in Commissioner of Income Tax-I, Kolhapur v. M/s Chaphalkar Brothers Pune (supra).

15. In the aforesaid view, no substantial question of law arises for consideration of this court in these appeals.

16. These appeals are, accordingly, dismissed.”

5. In so far as substantial question of law at 2.2 is concerned, the submission of Mr. Bhatia is identical to the one he has advanced on question of law at 2.1 above. He contends that the issue is covered in terms of the judgment of this Court in ITA no. 564/2012 decided on 23.08.2022 in respect very same Assessee in ***PVR Ltd vs. Commissioner of Income Tax***, wherein paragraph 5 the following has been held :

“5. Consequently, following the judgment of the Karnataka High Court in CIT vs. Biocon Ltd. (Supra), the question of law is decided in favour of the assessee and it is held that the Income Tax Appellate Tribunal erred in law in holding that the difference between the price at which stock options were offered to employees of the appellant company under ESOP and ESPS and the prevailing market price of the stock on the date of grant of such options was not allowable revenue expenditure under Section 37(1) of the Income Tax Act, 1961. Accordingly, the impugned judgment of the Tribunal is set aside.”

6. Similarly, in respect of question of law at 2.3 is concerned, the submission of Mr. Bhatia is that the issue shall be covered against the Revenue in view of the judgment of the Supreme Court in the case of ***Commissioner of Income Tax 5, Mumbai vs. Essar Tele holdings Ltd. 401 ITR 445 (SC)*** wherein the Court has held as under:-



49. It is relevant to note that impugned judgment in this appeal relies on earlier judgment of Bombay High Court in *Godrej and Boyce Manufacturing Company Limited versus Deputy Commissioner of Income Tax, Mumbai and Another*, (2017)SCC 421, where the Division Bench of the Bombay High court after elaborately considering the principles to determine the prospectivity or retrospectivity of the amendment has concluded that Rule 8D is prospective in nature. Against the aforesaid judgment of the Bombay High court dated 12.08.2010 an appeal was filed in this court which has been decided by vide its judgment reported in *Godrej and Boyce Manufacturing Company Limited Vs. Deputy Commissioner of Income Tax, Mumbai & Anr.* (2017) 7 SCC 421. This Court, while deciding the above appeal repelled the challenge raised by the assessee regarding vires of Section 14A. In para 36 of the judgment, this Court noticed that with regard to retrospectivity of provisions Revenue had filed appeal, hence the said question was not gone into the aforesaid appeal. In the above case, this Court specifically left the question of retrospectivity to be decided in other appeals filed by the Revenue. We thus have proceeded to decide the question of retrospectivity of Rule 8D in these appeals.

50. In view of our opinion as expressed above, dismissal of the appeal by the Bombay High Court is fully sustainable. As held above, the Rule 8D is prospective in operation and could not have been applied to any assessment year prior to Assessment Year 2008-09.

7. In view of the aforesaid position, the substantial question of law at 2.3 is rejected. The question no. 2.4 being consequential to questions at 2.1 to



2.3, is also liable to be rejected. We order accordingly.

8. In view of our above conclusion, the question of law at 2.5 being without merit, is also rejected. Hence no substantial question of law arises for consideration in this appeal. The appeal is dismissed in favour of the respondent against the Revenue. No costs.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 01, 2025

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