

ORDER SHEET
G.A no.633 of 2016
ITAT no.109 of 2016
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

Principal Commissioner of Income Tax, Kolkata-2, Kolkata

Versus

Rasoi Limited

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA BOSE

The Hon'ble JUSTICE ARINDAM SINHA

Date:15th February, 2017

Mr. Dudhoria, Adv.
..for the Revenue.

Mr.Gupta, Adv.
..for the Assessee.

Arindam Sinha, J: The Revenue is aggrieved by order dated 14th August, 2015 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA nos.1989/KOL/2013 and 1010/KOL/2013 respectively pertaining to assessment years 2008-09 and 2009-10.

Mr. Dudhoria, learned Advocate appeared on behalf of the Revenue and pressed the appeal for admission on only one of the suggested substantial questions of law as is set out below:

"Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, 'C' Bench Kolkata erred in law in upholding the order of C.I.T.(Appeal) without considering the decision in the case of Dhanuka and Sons 339 ITR 319 wherein the

Assessing Officer's reasonable approach of applying section 14A of the Income Tax Act, 1961 had been upheld against the Assessee's non disclosure of his special knowledge?"

He submitted that during the relevant year, the assessee earned dividend income of Rs.6,31,807/- which is exempt under section 10(34) of the Income Tax Act, 1961. The assessee had offered 1% of said exempt income to be treated as expenditure in respect thereof. The Assessing Officer found that there was no basis for such offer and did not accept the same. The Assessing Officer invoked section 14A of the Act and applying Rule 8D(2)(ii) worked out the expenditure at Rs.5,85,519. He relied on a judgment of this court of **Dhanuka & Sons Vs.CIT** reported in (2011) 12 taxmann.com 227 (Cal) to submit that the object of section 14A is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income.

Mr. Gupta, learned Advocate appeared on behalf of the assessee and submitted that the assessee had not incurred any expenditure on the investments which resulted in the dividend income. That had been found as a fact concurrently by the CIT as well as the Tribunal. He relied on firstly the case of **CIT Vs. HDFC Bank** reported in (2014) 49 taxmann.com 335 (Bombay) to submit that where there was a finding of fact given by the Tribunal that the assessee's capital, profit reserve, surplus and current account deposit were higher than the investment in the tax free security, it would have to be presumed that the investment made by the assessee would be out of the interest free funds available with it and dismissal of the appeal of the

Revenue by the Tribunal on such a ground does not give rise to any substantial question of law. He also relied on the case of **CIT Vs. Crish Park Vincom Ltd.** decided by a Bench of this court to which one of us was a party (Arindam Sinha,J.) and reported in **(2015) 371 ITR 15 (Cal)** wherein it was held that whether or not the expenditure incurred for the purpose of earning the exempt income has been properly explained is essentially a question of fact. In that case both Appellate Authority and Tribunal were of the opinion that the expenditure was properly established and as such the appeal of the Revenue was not admitted.

It appears for both the assessment years the Appellate Authority held that there was no finding of direct nexus between the borrowed fund and investment in shares. The assessee's own funds were far in excess of the average total investments. There could not be any presumption of utilization of borrowed funds. Hence disallowance under section 14A read with Rule 8D(2)(ii) was deleted while disallowance of indirect expenses of Rs.1,82,346/- by application of Rule 8D(2)(iii) upheld with the direction to allow relief of the sum already disallowed by the appellant itself.

On appeal preferred by the Revenue the Tribunal held as follows:-

"We have heard rival submissions and gone through facts and circumstances of the case. We find that now the revenue could not establish that the investments made in shares giving exempted income is out of borrowed funds on which interest is paid by assessee. There is no nexus whatsoever. On specific query Ld. Sr. DR could not controvert that the assessee has made investment in shares giving

exempt income out of own funds which is at about 2429 lacs and investment is at Rs.365 lacs only. Once this fact has not been denied and CIT(A) has categorically observed that the assessee has made investment in shares out of its own funds no disallowance can be attributed qua the interest paid on borrowed funds for investing the same in interest free funds. In view of the above, we confirm the order of CIT(A) on the common issue....."

We find that this case has yielded concurrent finding of facts regarding expenditure incurred by the assessee for the purpose of earning the exempt income, by the Appellate Authority and the Tribunal. As such there is no scope for interference with such concurrent findings of facts. We, therefore, are not satisfied that the case involves any substantial question of law.

The application and appeal are thus dismissed.

(Aniruddha Bose, J.)

(Arindam Sinha, J.)