ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

GA 3331 of 2016
With
ITAT 406 OF 2016

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
Versus
M/s. NATIONAL INSURANCE COMPANY LIMITED

BEFORE:
THE HON'BLE JUSTICE ANIRUDDHA BOSE
THE HON'BLE JUSTICE ARINDAM SINHA

Date : 15th February, 2017.

For Appellant/Petitioner : Md. Nizamuddin,Advocate

For Respondent/Assessee: Mr. N.K. Poddar, Senior Advocate,
Mr. D. Mitra, Advocate

ANIRUDDHA BOSE, J.:-

The appellant before us are the Revenue and in this appeal they assail a decision of the Income Tax Appellate Tribunal, Kolkata delivered on 3rd February, 2016 in ITA No. 675/Kol/2012. In the decision impugned, the Tribunal held that a sum of Rs.534.08/- crores, being profit on sale of investments of the assessee for the assessment year 2006-2007 is not taxable. The other point on which the decision of the Tribunal has been delivered pertain to disallowance of a sum of Rs.1,00,69,998/-, which sum was disclosed by the assessee for being subjected to taxation as expense/expenditure relating to earning of exempted income under Section 14A of the Income Tax Act, 1961. In the opinion of the Assessing Officer, this was too low a sum. The Assessing Officer, applying the principles incorporated in Rule 8D of the Income Tax Rules disallowed a sum of Rs.30,28,25,750/- under that head.

The assessee is a general insurance company, engaged in the business of insurance other than life insurance. Their income is required to be assessed in accordance with Section 44 of the Act read with Rule 5 of the First Schedule thereto. The assessee had claimed reduction from total income the aforesaid sum of Rs.534.08/- crores on the basis of the special provisions for taxation applicable to their case under Section 44 read with Rule 5 of Part B of Schedule-I to the Act. In this regard, a Circular issued by the CBDT bearing no.528, dated 16th December, 1988, has been relied upon by the assessee, which permitted such reduction. The Assessing Officer, however, observed that a circular could not override the mother provision of the statute. This specific issue has been dealt with by us in the case of same assessee for the assessment year 2005-06. In our judgement delivered in I.T.A.T No. 285/2016 on 10th February 2017, we have found such stand of the Revenue to be unsustainable. In that proceeding, the CIT (Appeals) as also the Tribunal disagreed with the Assessing Officer on this point and decided in favour of the assessee.

We had confirmed the decision of the Tribunal in our judgement in that appeal.

The second point involved in this appeal is rejection of the sum of Rs.1,00,69,998/-, disclosed by the assessee in terms of Sec 14A for disallowance being expenditure incurred by the assessee in relation to income which does not form the part of total income under the Act. This computation was made by calculating 1% of the exempt income, which, according to the assessee is the accepted norm in similar circumstances. The Assessing Officer found that the assessee did not consider the expenses debited as bank charges and other indirect expenses in insurance Revenue account for the calculation. Rule 8D was applied following a decision of a Special Bench of the Income Tax Appellate Tribunal, Mumbai, in the case of ***Daga Capital Markets (P) Ltd.*** decided on 28th October, 2008, in ITA No. 8507/M/03. The Commissioner of Income Tax allowed the appeal of the assessee, so far as applicability of the "One per cent Rule" is concerned. The Revenue's further appeal to the Income Tax Appellate Tribunal was also dismissed. That appeal, out of which this proceeding arises, was registered as ITA No. 675/Kol/2012 (A.Y. 2006-07) and the decision was delivered on 3rd February 2016. It was a composite decision, by which the Revenue's appeal pertaining to the assessment year 2005-06, being ITA No. 606/Kol/2012 (A.Y. 2005-2006) was also dismissed. We have referred to this decision earlier in this judgment.

The Tribunal held that Rule 8D could not be given retrospective operation, relying on a judgment of the Bombay High Court in the case of ***GODREJ AND BOYCE MFG.CO.LTD. Vs. Dy C.I.T.*** [(2010) 328 ITR 81(Bom)]. Following this authority, the Tribunal held that Rule 8D ought to operate from the assessment year 2008-09, and not 2006-07, being the assessment year with which this appeal is concerned. The Tribunal also found assessee's computation of expenses to be disallowed at the rate of 1% of the exempted income under Section 14A of the Act in the assessment years to which Rule 8D was not applicable to be in order.

The Tribunal chose to follow its earlier decisions in which 1% of the exempted income/dividend was considered as expenses/expenditure relating to the earning of exempted income Under Section 14A for the applicable assessment years. These decisions were:-

(i) ***Himtaj Consultants Vs. ITO*** (ITA No. 721/Kol/2007-AY 2004-05) order dated 27th April 2007

(ii) ***CHNHS Association Vs. ACIT*** (ITA No. 74/Kol/2008-AY 2004-05) order dated 19th February 2008.

(iii) ***I.T.O. Vs. M/s. S.P.S. Securities (P) Ltd.*** (ITA No. 12/Kol/2010-AY 2000-01) order dated 19th August 2010.

Before us no argument has been advanced on behalf of the Revenue to persuade us to take a view contrary to that taken by the Bombay High Court. We have ourselves gone through this judgement and concur with the opinion of the Hon'ble Bombay High Court on this point. In our opinion, provisions of Rule 8D is not applicable in the case of the assessee.

Argument of the assessee is that the Revenue had accepted the Tribunal's orders to the effect that 1% of the exempted income under Section 14A should be considered as expenses/expenditure in the assessment years in which Rule 14D was not applicable, and now it is not open to the Revenue to take a contrary stand. On this point, judgment of a Coordinate Bench in ITA 77 of 2014 (***Commissioner of Income Tax, Kolkata II, Kolkata Vs. National Insurance Company***) and a decision of the Hon'ble Bombay High Court in the case of ***COMMISSIONER OF INCOME-TAX V. GREENFIELD HOTELS AND ESTATES PVT.LTD*** [(2016) 389 ITR 68 (Bom)] have been relied upon by the assessee.

On this very point, there is a decision of another Coordinate Bench of this Court in I.T.A.T. No. 243 of 2012 (***Commissioner of Income Tax, Kolkata – IV Vs. M/s. R.R. Sen & Brothers (P) Ltd.***) decided on 4th January 2013. In this judgment, it has been held:-

"The assessee did not show any expenditure incurred by him for the purpose of earning the money which is exempted under the income tax. The Tribunal has computed expenditure at 1 per cent of such dividend income which, according to them, is the thumb rule applied consistently. We find no reason to interfere.

The appeal is dismissed."

It is not the case of the Revenue that any of these decisions have been appealed against. No argument has been advanced by the Revenue to distinguish the case of the assessee involved in this appeal from the aforesaid decision of a Coordinate Bench of this Court in ***R.R. Sen & Brothers (P) Ltd.*** (supra) or the three Tribunal decisions which would warrant following a different practice or principle of law. The "One per cent" Rule appears to be standard procedure followed for computation or calculation of regards expenditure or expenses in the given context. No case has been made out by the Revenue which would compel us to take a contrary stand. Both the points suggested by the Revenue as substantial questions of law are covered by earlier decisions of this Court.

In our opinion no substantial question of law is involved in this appeal.

The application and appeal accordingly stands dismissed.

(ANIRUDDHA BOSE, J.)

(ARINDAM SINHA, J.)