IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF APRIL 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

ITA NO.229/2015 C/W ITA NO.228/2015

ITA NO.229/2015

BETWEEN

1. THE COMMISSIONER OF INCOME-TAX
   C.R. BUILDING,
   QUEENS ROAD,
   BANGALORE.

2. THE DY. COMMISSIONER OF INCOME-TAX
   CIRCLE -11(4),
   RASHTROTHANA BHAVAN,
   NRUPATHUNGA ROAD,
   BANGALORE-560 001.

...APPELLANTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

AND

M/S. HIMATSINGKA SEIDE LTD
10/24, KUMARA KRUPA ROAD,

HIGH GROUNDS,
BANGALORE-560 001,
PAN:AAACH 3507N

...RESPONDENT

(BY SMT.VANI.H, ADVOCATE)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:10/01/2014 PASSED IN ITA NO.430/BANG/2012, FOR THE ASSESSMENT YEAR 2007-2008 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO. 430/BANG/2012 DATED 10/01/2014 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-11(4), BANGALORE.

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1. THE COMMISSIONER OF INCOME-TAX
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...APPELLANTS

(BY SRI.K.V. ARAVIND, ADVOCATE)

AND

M/S. HIMATSINGKA SEIDE LTD
10/24, KUMARA KRUPA ROAD,
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BANGALORE-560 001,
PAN:AAACH 3507N

...RESPONDENT

(BY SMT. VANI. H, ADVOCATE)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:10/01/2014 PASSED IN ITA NO.393/BANG/2012, FOR THE ASSESSMENT YEAR 2007-2008 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO. 393/BANG/2012 DATED:10/01/2014 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-11(4), BANGALORE.

THESE APPEALS COMING ON FOR ORDERS THIS DAY, ***JAYANT PATEL J.***, DELIVERED THE FOLLOWING:

JUDGMENT

The appellant-Revenue has preferred the present appeals by raising the following substantial questions of law:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is entitled for deduction under section 10B of the Act by following its earlier order passed in the case of the assessee even when the assessee has not fulfilled the conditions set out in the said provision and the orders relied upon by the Tribunal has not reached finality?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the issue of disallowance under section 14A of the Act being sustained at 5% of exempted income i.e., Rs.25,23,655/- does not call for any

interference even when the assessing authority was correct in making disallowance under section 14A of the Act and the Commissioner of Income Tax (Appeals) had modified the same in the absence of proper reasonings?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance of interest amounting to Rs.44,71,565/- under section 36(1)(iii) of the Act even when the assessing authority had rightly disallowed the same by holding that the assessee had advanced inter-corporate loans amounting to Rs.21,03,58,510/- to its 100% subsidiary concern M/s.Himatsingka Wovens Pvt. Ltd., interest free for which no interest was charged by the assessee and assessed had failed to prove that the same was for the business purpose?"

2. We have heard Mr.K.V.Aravind, learned Counsel appearing for the appellants-Revenue and Ms.Vani H., learned Counsel appearing for the respondent-assessee.

3. We may record that so far as question No.1 is concerned, learned Counsel for the appellant-Revenue has not pressed the said question and therefore the said question would not arise in the present appeals.

4. So far as question No.2 is concerned, the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for brevity) in the impugned order has considered the said aspects from para-7.3 and 8 which read as under:

> "7.3 We have heard both parties at length and perused and carefully considered the material on record and the judicial decisions cited. It is seen from the order of the learned CIT (Appeals) that while he has held that the Assessing Officer was correct

in making of the disallowance under section 14A of the Act, the provisions of Rule 8D would not be applicable for the year under consideration i.e. Assessment Year 2007-08 but would be applicable w.e.f. 24.3.2008 i.e. for -and from Assessment Year 2008-09. In holding that a reasonable disallowance of 5% of exempted income i.e. Rs.25,23,655 is to be made in respect of the expenditure incurred to earn such income, the learned CIT (Appeals) followed the decisions of the co-ordinate benches of this Tribunal in the case of ING Vysya Bank Ltd. in ITA No.589/Bang/2006 dated 23.4.2008 and the case of ACIT V Ingersoll Rand India Ltd. in ITA No.7254/Mum/Bangalore 'A' Bench dated 30.8.2010. In view of the aforesaid judgments of the co-ordinate benches of this Tribunal (supra) and on an appreciation of the facts of the case on hand, we are of the view the order of the learned CIT (Appeals) on the issue of the disallowance under section 14A of the Act

being sustained at 5% of exempted income, i.e. Rs.25,23,655 does not call for any interference and we therefore uphold the order of the learned CIT (Appeals) on this issue. Consequently both the grounds raised by revenue at S.No.5 to 7 and by the assessee at S.No.2 of its grounds of appeal are dismissed.

* * *

8. In the result, revenue's appeal is dismissed."

5. It may also be recorded that in the decision of the Bombay High Court in case of ***Godrej & Boyce Mfg. Co. Ltd., Vs. Deputy Commissioner of Income Tax & Anr.*** reported at **(2010) 328 ITR 0081**, the view taken was that Rule 8(D) of the Income Tax Rules, (hereinafter referred to as the 'I.T. Rules' for short) would apply with prospective effect and not retrospectively, has also been considered by the Tribunal.

6. As per the decision of the Bombay High Court in the above referred case, once Rule 8(D) of the I.T. Rules, is held to be having prospective effect, naturally it could not be applied to the assessment year in question and therefore, the view taken by the Tribunal cannot be said to be erroneous nor it can be said that any substantial question of law would arise for consideration.

7. However, Mr.K.V.Aravind, learned Counsel appearing for the appellants-Revenue did rely upon the decision of the Kerala High Court in the case of ***Commissioner of Income Tax Vs. Catholic Syrian Bank Ltd. & Ors.*** reported at **(2012) 344 ITR 0259** and contended that though the said case was pertaining to assessment year 2007-08, the applicability of Rule 8(D) of the I.T. Rules was accepted by Kerala High Court

and therefore, a different view is said to have been taken. Under the circumstances, the appeal may deserve consideration on question No.2.

8. We may record that in the said decision of Kerala High Court, the question did not arise at all for consideration before the Kerala High Court as to whether Rule 8(D) of the I.T. Rules is having retrospective effect or prospective effect. On the contrary at para-3 of the judgment, it has been recorded as under:

> "According to both counsel for the assessees proportionate disallowance is called for only under sub-s. (2) r/w r.8D of the IT Rules which came into force from 2007-08 onwards and the same cannot be applied for any earlier assessment year."

9. Therefore the judgment can hardly be said to be on the point decided for considering the applicability of Rule 8(D) of the I.T. Rules with retrospective effect as sought to be canvassed. Further, in any case, there is no consideration on the aspects of prospectivity or retrospectivity of Rule 8(D) of the I.T.Rules. It is hardly required to be stated that the decision of any High Court would not be a precedent by deducing the result on facts of the case and the effect thereon. But it can be considered as a precedent only if the point is specifically considered and decided in either way. Under the circumstances, the decision of Kerala High Court is of no help to the learned Counsel for the appellants-Revenue.

10. Once the point is already concluded as per the decision of Bombay High Court referred to hereinabove, we do not find that any substantial question of law viz.,

question No.2 would arise for consideration as sought to be canvassed.

11. On question No.3 the relevant discussion of the Tribunal from paras-10.5.1 to 10.5.3 read as under:

> "10.5.1 We have heard the rival submissions and perused and carefully considered the orders of the authorities below, the assessee's submissions and the material on record. From the details on record, it is seen that there is no dispute with regard to the fact that the assessee had borrowed funds from banks for acquiring fixed assets for its new unit at Hassan, as well as Term Loans and working capital of its existing operational units at Seide and Filate for manufacturing fabrics and yarn. The learned Authorised Representative has furnished break up of the interest debited to profit and loss account for the relevant period which evidences that the interest of Rs.44,71,565 was claimed as follows:

a) On Term Loan for Filate & Siede units Rs.44,20,762 and

b) On working capital for Filate & Siede units Rs.50,803.

Therefore the facts that the entire interest paid on the Term Loan taken for acquiring fixed assets for its new unit at Hassan has been capitalized as work-in-progress has evidently not been claimed as a revenue expenditure is, in our view, factually established.

10.5.2 We also find from the submissions of the learned Authorised Representative that the assessee company has been earning profits year on year and had a net worth of approx.. Rs.600.71 Crores, whereas the loan advanced to its subsidiary **M/s. Himatsingka Wovens P. Ltd.** during the period under consideration, was only Rs.9.60 Crores and the aggregate loans advanced by the assessee to this subsidiary including that of earlier year is

approx.. Rs.21.03. Crores. We also observe from the order of assessment, that the Assessing Officer has not established with any material evidence that the loans advanced interest free by the assessee to its subsidiary, **Himatsingka Wovens P.Ltd.** were diverted to it by the assessee from out of the Term Loan taken by it from banks for the existing manufacturing units at Filate and Seide or from out of loans taken for working capital for its existing units at Filate and Seide.

10.5.3 In view of the established fact that the interest of Rs.44,71,565 claimed by the assessee in its profit and loss account for the period under consideration pertained to–

(i) The Term Loan taken for the existing manufacturing units at Filate and Seide amounting to Rs.44,20,762; and

(ii) Working Capital Loan taken for the existing units at Filate and Seide amounting to Rs.50,803, it is, in our opinion, factually clear that the interest on the Term Loan for the new Hassan unit of the assessee company has been capitalized and what has been charged by the assessee to the profit and loss account is only interest pertaining to its existing manufacturing units at Filate and Seide. In this view of the matter, as discussed from para 10.1 to 10.5.3 of this order (supra), we are of the opinion that the disallowance of interest amounting to Rs.44,71,565 under section 36(1)(iii) of the Act made and confirmed by the authorities below is unsustainable on facts and is, therefore, accordingly deleted. It is ordered accordingly."

The aforesaid shows that the Tribunal has after undergoing the examination of the record found that the amount of Rs.44,20,762/- was pertaining to the term loan taken for the existing manufacturing unit at Falite and Seide and it has also found that the amount of Rs.50,803/- is pertaining to working capital loan taken for the existing unit at Falite and Seide and both the aforesaid amount totaling to Rs.44,71,565/- are towards interest claimed by the assessee.

12. Once the interest is of a loan taken for the existing manufacturing unit, may be as term loan or may be working capital, the interest cannot be disallowed. Further on the question of diversion of fund, it is by now well settled that the business wisdom of the assessee cannot be substituted by the assessing officer. Further the loan was actually taken for

establishing a new unit and the utilization thereof is proved.

13. Under these circumstances, we find that it cannot be said that the Tribunal has committed an error in deleting the disallowance made by the Assessing Officer or CIT (Appeals) of the amount of interest of Rs.44,71,565/-. In our view, no substantial question of law vide question No.3 would arise for consideration as sought to be canvassed.

14. In view of the above, both the appeals are dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

JT/-