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

+ ITA 349/2022

PR. COMMISSIONER OF INCOME TAX -7 Appellant

Through: Mr. Puneet Rai, Sr. Standing Counsel
for Revenue with Ms. Adeeba
Mujahid, Jr. Standing Counsel.

versus

M/S PTC INDIA FINANCIAL SERVICES
LIMITED

..... Respondent

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani & Ms. Ananya Kapoor,
Advocates.

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Date of Decision: 22nd September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present income tax appeal has been filed challenging the order dated 19th February, 2021, passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1267/Del./2015 for the Assessment Year 2010-11.
2. Learned counsel for the appellant states that the ITAT has erred in deleting the disallowance of Rs.4,74,88,156/- made under Section 14A of the Income Tax Act, 1961 ('the Act') read with Rule 8D of Income Tax Rules (the 'Rules') and in not appreciating the fact that the assessee had earned tax free dividend income of Rs.4,63,01,246/- during the year under consideration that needed to be apportioned.



3. He further states that the ITAT has erred in deleting the disallowance of Rs.19,39,69,553/- under Section 32 of the Act based on the documentary evidence which was never submitted before the Assessing Officer and admitted by the Appellate Authority in violation of Rule 46(3) of the Rules without giving an opportunity to the Assessing Officer ('AO') to examine the claim.

4. A perusal of the paper book reveals that the AO rejected the assessee company's computation on the ground that the "*assessee company had raised substantial amount of loans for investment in new ventures on which substantial amount of interest was paid*". However, the Appellate Authorities below held that the investments were made out of assessee's own funds and no borrowed funds were used to acquire investments. Consequently, there was no interest expenditure which could be directly or indirectly attributed to the exempt income. Therefore, the Appellate Authorities upheld the *suo moto* disallowance of Rs. 16,05,000/- made by the assessee after taking 20% of employee cost and 5% of the administrative cost.

5. The Supreme Court in *South India Bank Ltd. v. Commissioner of Income Tax, [2021] 10 SCC 153* has held that where the assessee has mixed funds (made up partly of interest free funds and partly of interest bearing funds) and the payment is made out of mixed fund, the investment must be considered to have been made out of the interest free fund. The Supreme Court in the said judgment held "*...in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is*



made and it may not be permissible for the Revenue to make an estimation of a proportionate figure...”

6. Further, the Commissioner of Income Tax (Appeals) [‘CIT(A)’] deleted the additions under Section 32 based on documents which were duly submitted to the AO as well as CIT(A). The CIT (A) duly considered the documents on record and after the verification of the evidence, rightly deleted the addition. The ITAT has even recorded that the details were submitted by the assessee during the assessment proceedings as per the reply/submissions dated 11th December, 2012 which is mentioned at page 1 of the assessment order itself. The ITAT has also recorded that there was no new evidence brought on record by the assessee and in fact, the AO has totally ignored the reply dated 11th December, 2012, filed by the Assessee.

7. Consequently, both the appellate authorities below have recorded concurrent findings of fact on both the issues. Accordingly, this Court is of the view that no substantial question of law arises for consideration in the present appeal and the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 22, 2022/msh