

\$~

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10.01.2018

+ ITA 1000/2017 & CM No.41760/2017

JUBILANT SECURITIES PVT LTD Appellant

versus

DEPUTY COMMISSIONER OF INCOME-TAX

..... Respondent

+ ITA 1001/2017 & CM No.41761/2017

JUBILANT SECURITIES PVT LTD Appellant

versus

DEPUTY COMMISSIONER OF INCOME-TAX

..... Respondent

+ ITA 1014/2017 & CM No.41800/2017

JUBILANT CAPITAL PVT LTD Appellant

versus

DEPUTY COMMISSIONER OF INCOME-TAX

..... Respondent

Present: Mr. Gaurav Jain with Mr. Aditya Vohra, Advs. for
appellant.
Mr. Asheesh Jain, Senior Standing Counsel,
Income Tax Department.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

%

10.01.2018

1. The assessee/appellant urges that the Income Tax Appellate Tribunal (ITAT) fell into error in declining to condone the delay which occurred in the filing of its cross-objection having regard to the changed position in law substantively, with respect to the interpretation of Section 14A of the Income Tax Act, 1961 (hereafter referred to as “the Act”).

2. The assessee in these appeals were subjected to disallowance under Section 14A of the Act. They appealed to the CIT(A), who granted limited relief as to the quantum on an application of the decision of the Bombay High Court in *Godrej & Boyce Manufacturing Co. Ltd. Mumbai v. DCIT* 328 ITR 81. In the meanwhile, the relief granted became the subject matter of appeal to the ITAT, by the Revenue. During the pendency of those appeals, by judicial decision (in the judgment reported as *CIT v. Holcim India (P) Ltd.* ITA No.486 & 299/2014 decided on 05.09.2014) the cross-objections were filed. The assessee contended that the exempt income for which disallowance was ordered under Section 14A of the Act was by way of investment in subsidiary for business purposes and not for investment purposes and therefore, the disallowance was not warranted.

That concededly was the purport of *CIT v. Holcim India (P) Ltd. (supra)* and other decisions relied upon by the assessee.

3. The cross-objections were grossly delayed – to the extent of about 1400 days or so. The ITAT refused to condone the delay. In the application seeking condonation, the assessee contended that since the Revenue's appeals were pending, it was entitled to prefer the cross-objection and urged the question of law, that it sought to. The assessee relied upon the authority of the Supreme Court in *National Thermal Power Co. Ltd. v. CIT* (1998) 229 ITR 383 (SC) and some other judgments of the High Courts. The ITAT, however, declined to grant relief and rejected the application for condonation of delay.

4. It is urged on behalf of the assessee that once a party enters the Appellate Court, the issues are at large and the appellate forum is entitled to consider the correct position in law. So viewed, the cross-objection preferred was sufficient for the ITAT to have examined the claim of applicability of Section 14A to the exempt income derived in the present case and whether that be brought to tax at all. Learned counsel relied upon *National Thermal Power Co. Ltd. (supra)* as well as the judgment of the Madhya Pradesh High Court [*Deputy Commissioner of Income Tax v. Turquoise Investment and Finance Ltd.* 299 ITR 143 (MP)]. It was submitted that in the larger interest of justice, once the appellate forum is *seisin* of the cause in an appeal, it is under a duty to exempt all

dimensions including the upto date developments in law to grant relief or deny it, as the case may be.

5. What is not in dispute in the present case is that after the CIT(A) granted limited relief and reduced the quantum of the disallowance, the assessee was satisfied. It did not prefer either an appeal or a cross-objection within the time stipulated in this regard. This, in the opinion of the Court, meant that the issue of applicability of Section 14A attained finality. The appellant / assessee, in the light of *CIT v. Holcim India (P) Ltd. (supra)*, however, woke up and chose to approach the ITAT, the appeals pending before it by the Revenue. The appeals were preferred in 2011, by the Revenue. The CIT(A) had made the order on 27.10.2010. In the circumstances, the belated cross-objections – by over four years, in the opinion of the Court, meant that the appellants were seeking to rake up stale issues for which they had accepted the finality as regards their tax liability.

6. The reference to *National Thermal Power Co. Ltd. (supra)*, in the opinion of the Court, is entirely irrelevant. In that case, the aggrieved assessee had already approached the appellate forum; it sought to urge the ground that became available to it during the pendency of the appeal. In the present case, however, the assessee did not approach the ITAT either in its own right as an appellant, if, it was at all aggrieved by the decision of the CIT(A), (who premised the liability on the basis that Section 14A applied) or even in the cross-objection.

Likewise, the Court is of the opinion that the broad observations made in *Turquoise Investment and Finance Ltd. (supra)* by the Madhya Pradesh High Court, cannot in this case, obviate the essential fact that there was acceptance about the basic liability.

For the above reasons, the Court is of the opinion that no question of law arises. The appeals are, accordingly, dismissed. The pending applications also stand disposed of accordingly.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 10, 2018
kks