IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF OCTOBER 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

ITA NO.67 OF 2015

BETWEEN:

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

2. THE DEPUTY COMMISSIONER OF
INCOME TAX, CENTRAL CIRCLE-1(2),
C.R. BUILDING, QUEENS ROAD,
BANGALORE. ... APPELLANTS

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

AND:

M/S BRINDAVAN BEVERAGES PVT LTD
NO.10, 11TH MAIN,
VASANTHNAGAR,

BANGALORE-560 052.
PAN: AAACB7390R ...RESPONDENT

(BY SRI A.SHANKAR M.LAVA, ADV.)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT, 1961, ARISING OUT OF ORDER DATED: 28/08/2014, PASSED IN ITA NO. 1338/BANG/2012, FOR THE ASSESSMENT YEAR 2009-2010, PRAYING TO

1. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

2. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO. 1338/BANG/2012 DATED 28/08/2014 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-11(2), BANGALORE.

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

JUDGMENT

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

1. Whether the Tribunal was correct in deleting the disallowance u/s 14A r.w.r. 8D(2)(ii) and 8D (iii) in respect of investments in assets yielding tax free income, holding that the provisions of Section 14A cannot be invoked unless and until there is a receipt of exempted income for the concerned assessment year without appreciating the provisions of section 14a read with Rule 8D(2)(ii) in its true sense and right spirit and the fact that when the interest expense incurred cannot be directly attributed to any particular income or receipts, provisions of Rule 8D (2) (ii) are automatically applicable ?

2. Whether the Tribunal was correct in not considering the Board's Circular No.5/2014 dated 11.02.2014 which has made it clear that the disallowance u/s 14A r.w.r. 8D has to be made even where the tax payer in a particular year has not earned any exempted vis-à-vis dividend income ?

2. The learned counsel appearing for the appellant submitted that as per the instructions received by him since the matter is directed by the Tribunal to the lower authority, he is not pressing question Nos.1 and 2.

3. However, he submitted that inadvertently he could not formulate and place on record another question for disallowance of interest, which was contended before the Tribunal and he submitted that he may be permitted to add a question for disallowance of the interest out of the total interest claim considering it non specific and for such purpose he has tendered addition of question as under :-

> "Whether the Tribunal was correct in holding that the assessee is entitled to deduction of interest on loans when assessee has extended interest free loans to directors &

> sister concerns and when assessee has failed to establish the nexus between the interest free funds available with it and non-interest bearing advances/loans recorded perverse finding ?"

4. We permit the learned Advocate to amend the memo of appeal by raising the aforesaid question.

5. As the learned Advocate has restricted the present appeal only on the new question formulated and as question Nos.1 and 2 are not pressed, we find that only aspect to be considered is newly added question. The relevant discussion of the Tribunal on the aforesaid question is at paragraph Nos.22 and 23 which reads as under :-

> *"22. We have perused the orders and heard the rival contentions. Balance sheet of the assessee placed at PB*

page-53, show its share capital reserved & surplus as under;

	As on 31.03.2008	As on 31.03.2009	Increase
Share capital	**24,53,000**	**24,53,000**	**NIll**
Reserves & Surplus	**1,55,43,00,078**	**1,64,19,66,727**	**87666649**
TOTAL	**1,55,67,53,078**	**1,64,44,19,727**	**87666649**

There cannot be any dispute that at least share capital and reserves are own funds of the assessee. The position of the loans and advances as on 31.03.2008 and 31.03.2009 were as under;

	31.03.2008	31.03.2009	Increase/Decrease
	Rs.	**Rs.**	**Rs.**
Loans/advances to Directors & Sister Concern	*26,17,61,903*	*19,26,50,342*	*(6,91,11,561)*

Thus not only has assessee own funds, well covering the loans and advances, but in the previous year the advances had gone down. In none of the earlier assessment year viz. by 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 were any *disallowance for interest on loans for non-business purpose made.*

23. As for the decision of the Hon'ble P & H High Court in Abhishek Industries Ltd., (supra) is concerned, this was followed by the very same High Court, while confirming a similar disallowance in the case of Munilal Sales Corpn. Vs CIT 298 ITR 288. Hon'ble Apex court reversed the latter in 298 ITR 298 and hence judgment in Abhishek Industries Ltd., will not further revenue's case any way. On the other hand, assessee is well supported by the decision of Hon'ble Mumbai High Court in the case of Reliance Utilities & Power Ltd., (supra) as well as Hon'ble Gujarat High Court in the case of Raghuvir Synthetics Ltd.,(supra). We thus do not find any reason to interfere with the order of the CIT(A) in this regard. In the result ground 4 of the revenue is dismissed."

6. The aforesaid discussion shows that the Tribunal has found that the decision upon which reliance has been placed by the Revenue in the case of ***PUNJAB AND HARYANA HIGH COURT IN ABHISHEK INDUSTRIES LTD.,*** is already reversed by the Apex Court in the case of

MUNILAL SALES CORPN. VS. CIT 298 ITR 283 and further the Tribunal has also found that the stand of the assessee is supported by the decision of ***MUMBAI HIGH COURT in the case of RELIANCE UTILITIES AND POWER LTD.,*** (313 ITRR 340) as well as Gujarat High Court in the case of ***RAGHUVIR SYNTHETICS LTD*** (354 ITR 222)**.**

7. In our view, when both the issues are covered by the decisions of two High Courts, we do not find that any substantial question of law would arise for consideration, hence the appeal is ***dismissed.***

SD/-
JUDGE

SD/-
JUDGE

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ct-*sk*