

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 270 of 2016 (O&M)
Date of decision: 27.02.2017**

The Pr. Commissioner of Income Tax, Patiala

.....Appellant

Vs.

State Bank of Patiala

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Zora Singh Klar, Advocate for the appellant.
Mr. Sanjay Bansal, Senior Advocate with Mr. Amit Prashad,
Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.3.2016, Annexure A.3, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the Tribunal") in ITA No. 447/Chd/2014, claiming following substantial question of law for the assessment year 2009-10:-

(i) "Whether in the facts and circumstances of the case, the Hon'ble ITAT is right in law in quashing the order under Section 263 of the Income Tax Act, 1961 without considering the observations made by the CIT in that order?"

2. Briefly, the facts necessary for adjudication of the controversy involved, as narrated in appeal, may be noticed. During the assessment

proceedings under Section 143(3) of the Act, vide order dated 23.12.2011, the Assessing Officer made disallowance of ₹ 2,32,60,607/- under Section 14A of the Act in addition to the disallowance of ₹ 5,00,117/- made by the assessee in the return of income. On examination of the assessment record and the assessment order of the assessee for the assessment year 2009-10, it was revealed that the Assessing Officer had limited the disallowance under Section 14A of the Act to the amount of exempt dividend income, even though he had computed the disallowance under Rule 8D of the Income Tax Rules, 1962, (in short, "the Rules) to be at a higher figure. The assessee was given show cause notice under Section 263(1) of the Act to show cause as to why the disallowance under Section 14A of the Act should not be enhanced to ₹ 45.76 crores as against ₹ 2.32 crores made by the Assessing Officer. After considering the assessee's reply, the Commissioner of Income Tax, (CIT) vide its order dated 18.03.2014 enhanced the disallowance to ₹ 45.76 crores and directed the Assessing Officer to pass an order accordingly. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated 28.03.2016, Annexure A.3, the Tribunal quashed the order dated 14.03.2014 passed under Section 263 of the Act holding that since while deciding the assessee's appeal for the same year, it had deleted the addition made by the Assessing Officer under Section 14A of the Act, the action of the CIT under Section 263 of the Act is also quashed being on the same issue. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. At the outset, learned counsel for the assessee submitted that the CIT while issuing notice under Section 263 of the Act exercising revisional jurisdiction had primarily sought to make the disallowance under Section 14A of the Act to the extent of the income earned irrespective of the

amount of exempt dividend income. Learned counsel relied upon decision of a Division Bench of this Court in *Principal Commissioner of Income Tax Vs. State Bank of Patiala*, (2017) 78 *Taxmann.com* 3, in the case of the assessee relating to the assessment year 2008-09 wherein the issue on merits has been answered in favour of the assessee and against the revenue. The appeal in the said case was accordingly dismissed. It was urged that on merits, the issue is required to be answered in favour of the assessee. Once that was so, the exercise of revisional jurisdiction under Section 263 of the Act was improper.

5. However, learned counsel for the appellant-revenue urged that though the issue has been decided in favour of the assessee, yet invoking the provisions of Section 263 of the Act cannot said to be inappropriate in the facts and circumstances of the case.

6. After hearing learned counsel for the parties, we notice that the issue on merits has been decided in favour of the assessee in *State Bank of Patiala's case* (supra). The amount of disallowance under Section 14A was restricted to the amount of exempt income only and not at a higher figure. Once that was so, we do not consider it appropriate to discuss the scope of Section 263 of the Act as the same has been rendered academic in view of the issue being answered in favour of the assessee on merits. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

February 27, 2017
'gs'
Whether speaking/reasoned
Whether reportable

(Ramendra Jain)
Judge
Yes/No
Yes