

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APEAL NO. 95 OF 2015

The Commissioner of Income Tax 7,  
Mumbai ... Appellant

Vs.

M/s. P.N. Writer & Co. Pvt. Ltd., Mumbai ... Respondent

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Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Appellant.

Mr. Satish Mody a/w Ms. Aasifa Khan for the Respondent.

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**CORAM : S. C. DHARMADHIKARI &  
PRAKASH D. NAIK, JJ.**

**DATE : SEPTEMBER 25, 2017.**

**P.C. :**

1. This Appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal dated 18th June, 2014.
2. The assessment year in question is 2008-2009.
3. The Revenue has proposed four questions on page nos. 5 and 6 of the memorandum of Appeal and it is stated that each one of them is substantial question of law.
4. The argument is that the amount was paid under a self-assessment and made by the assessee. Initially, it filed a return of income declaring total income of Rs.60,80,880/-. That was filed on 8th January, 2009. This return was processed under Section 143(1)(a) of the Income Tax Act, 1961 (for short, "the IT Act")

and the case was subsequently selected for scrutiny. Notices were issued and served upon the respondent assessee. During the course of the assessment proceedings, the Assessing Officer observed that the addition under Section 14A read with Rule 8D is made in past almost all assessment years. Since the facts and circumstances pertaining to the assessment year in question are identical, hence he made addition of Rs.30,38,149/-.

5. This assessment order made on 29th December, 2010 was challenged in Appeal by the respondent assessee. The Commissioner of Income Tax (Appeals) disposed of the Appeal by reducing the disallowance from Rs.30,38,149/- to Rs.26,08,125/-. During hearing of the Appeal, the assessee raised an additional ground of non-granting of interest under Section 244A on the payment of Rs.4.50 crores made in July, 2008 on estimation basis. The Commissioner held that the assessee failed to produce any material which would demonstrate how this tax was worked out, and particularly during the course of self-assessment, and refused the relief of interest. The assessee being aggrieved and dissatisfied, approached the Tribunal.

6. The Tribunal in the impugned order held that as far as the finding of the Commissioner of Income Tax (Appeals) is concerned, that invocation of Section 14A read with Rule 8D since the assessment year in question is 2008-2009, is correct. Therefore, the order of the Commissioner of Income Tax (Appeals) was upheld.

7. Then, the assessee raised the plea that interest has not been granted and after discussing the submissions in the light of the language of Section 244A, the Tribunal held that it is evident that self-assessment tax is payable on the income shown in any return of income and after taking into account the amount of tax, if any, paid earlier which can also include advance tax and other credits. Thus, the self-assessment tax includes any amount of tax which has already been paid under the provisions of the IT Act. In the present case, the assessee paid tax in the month of July, 2008 for the assessment year 2008-2009. The due date for filing return was 30th September, 2008. Therefore, the Tribunal held that the tax was already paid.

8. The tax paid by the assessee for a sum of Rs.4.50 crores is nothing but tax paid under self-assessment for the purpose of Section 140A and once that is so, the assessee is entitled to interest.

9. The Tribunal followed a judgment of the Hon'ble Karnataka High Court in the case of *Commissioner of Income Tax & Anr. vs Vijaya Bank*, reported in (2011) 338 ITR 489 (Kar.) and that of the Hon'ble Delhi High Court in case of *Commissioner of Income Tax vs Sutej Industries Ltd.*, reported in (2010) 37 Direct Tax Reporter 25 (Del).

10. The only contention raised before us by Mr. Suresh Kumar is that this Court, on 17th November, 2014, which is much after the

Tribunal's order, in the case of *Stock Holding Corporation of India Limited vs. N.C. Tewari, Commissioner of Income-Tax and Others*, reported in [2015] 373 ITR 282 (Bom), while allowing the Writ Petition by the assessee, relied on the very judgments including that rendered by the High Court of Delhi in the case of *Sutlej Industries Ltd.* (supra).

11. However, the judgment of the High Court of Delhi in *Sutlej Industries Ltd.* (supra) was subsequently disagreed with by another Bench of that very Court. Thereafter, the matter was carried to the Hon'ble Supreme Court of India and now, the issue/question is remanded. Mr. Suresh Kumar submits that the remand to Delhi High Court is in the light of the explanation below Clause (b) of Sub-section (1) of Section 244A of the IT Act. That refers to Section 156 insofar as excess payment of the demand.

12. There is no reference therein to Section 140A and which is sought to be invoked in the case of the present assessee.

13. In the circumstances, he would submit that when there is a self-assessment and tax is paid in terms of such self-assessment, the obligation to award interest does not arise.

14. We do not think that it would be fair for the Revenue to demonstrate to us that the Division Bench judgment of this Court in *Stock Holding Corporation of India Limited* (supra), which discusses all these questions and answers them against the

Revenue and in favour of the assessee, should be brushed aside or ignored. It is not shown to be per incuriam, nor is it demonstrated that this judgment has not been accepted by the Revenue, and therefore, challenged in the Hon'ble Supreme Court of India and that challenge is pending or this judgment has been reversed.

15. In the absence of such material on record, we do not think that the Division Bench judgment, which discusses all the questions and which are identical to the present case, should be discarded in this manner. Judicial discipline demands that we follow and apply it to the case at hand because the facts and circumstances are identical and equally the legal provisions.

16. In view of the Division Bench judgment of this Court in *Stock Holding Corporation of India Limited* (supra), we answer each of these questions against the Revenue and in favour of the assessee. They are not substantial questions of law at all. The Appeal is therefore devoid of merits and is dismissed. There shall be no order as to costs.

(PRAKASH D. NAIK, J.)

(S. C. DHARMADHIKARI, J.)