R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 229 OF 2017

Pr. Commissioner of Income Tax -2 .. Appellant

Versus

M/s. Lee & Murihead Pvt Ltd .. Respondent

.....

- Mr. Suresh Kumar for the Appellant

.....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : APRIL 2, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short).

2. Following questions are presented for our consideration :-

> "(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in excluding some of the expenses holding as not directly related to earning dividend income which is in contravention to Rule 8D(2)(iii) of the I.T. Act, 1961?
>
> (b) Whether on the facts and in the circumstances of the case

and in law, the Tribunal has erred in holding that the amount deducted by the AO is admissible u/S. 37(1) of the I.T. Act, 1961 as wholly and exclusively for the purpose of business?

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in holding that assessee has rightly written off the debts and it was clearly admissible as a deduction u/S. 36(1)(vi) of the I.T. Act, 1961?

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in dismissing the appeal of the Revenue in respect of addition u/S. 40(a)(ia) of Rs. 1,65,612/- in connection with leased line charges to Videsh Sanchar Nigam Limited relying on the Bombay High Court Judgment in the case of Kotak Securities Ltd?"

3. Question No. (a) relates to the disallowance of expenditure to be made in case of the respondent assessee in terms of Rule 8D(2)(iii) of the Income Tax Rules 1963 read with Section 14A of the Income Tax Act, 1961 (“the Act” for short). The Assessing Officer and the CIT(A) had made disallowance of Rs. 14.61 Lakhs in case of the assessee in relation to indirect expenses for earning exempt income @ 0.5% of the average investments. The Tribunal in further appeal by the assessee retained 6.61 Lakhs by giving relief to the assessee to the extent of Rs. 8 Lakhs on the ground

that Rule 8D cannot be applied blindly when the assessee had hardly incurred any expenses in relation to the dividend earned and substantial investments were made temporarily in order to park the idle funds.

4. Learned counsel Mr. Suresh Kumar for the Revenue argued that once in facts of the case, Rule 8D applies, the Tribunal, thereafter had no discretion to restrict or reduce the disallowance. Once in terms of Section 14A of the Act, the disallowances voluntarily made by the assessee are to be discarded, Rule 8D of the Rules would apply. Sub-rule (2) of Rule 8D as it stood at the relevant time provided for a formula for such disallowances. Clause (iii) of Rule 8D(2) of the Rules pertains to disallowance of what is popularly referred to as administrative expenses. Though no such expression is used in the Rule which would be an amount equal to one-half percent of the average of the value of the investment. It would prima facie appear that once this rule applied and therefore, the said formula become applicable, the Tribunal thereafter could not have taken other factors into account to come to the conclusion that such

disallowance was excessive.

5. However, in the present case, we are not inclined to admit the appeal on this ground. Firstly because the disputed amount itself is not very substantial and secondly, though not so clearly stated, the view of the Tribunal can as well be understood and interpreted as one holding that the facts necessary for applicability of Rule 8D, did not arise in the present case. We may recall, sub-section (2) of Section 14A of the Act provides that the Assessing Officer would determine the amount of expenditure incurred in relation to income which does not form part of the total income if he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. If the expenditure already voluntarily disallowed by the assessee is found to be reasonable, the Assessing Officer in any case could not have resorted to Rule 8D of the Rules.

6. Question No. (b) pertains to the disallowance of deduction of a sum of Rs. 45.16 Lakhs claimed by the assessee under Section 37(1) of the Act. The Tribunal noted

that the assessee had terminated lease and licence in respect of two warehouses from Paras Commercial Centre. The lessor deducted a sum of Rs. 45.16 Lacs towards compensation for premature termination of the lease agreement. The Tribunal in such facts held that the early termination of the lease was a business decision and the expenditure incurred in relation to the same was wholly and exclusively for the purpose of business. We find no error in the view of the Tribunal.

7. Question No. (c) pertains to the assessee's claim of writing off the bad debts and claiming deduction under Section 36(1)(vi) of the Act. In this respect, the Tribunal noted that the assessee had purchased certain assets on slump sale basis. In the process, certain debts which were part of the current assets were reduced. The assessee wrote off sum of Rs. 1.76 Crores claiming same to be admissible under Section 36(1) of the Act. The Tribunal while reversing the view of the Assessing Officer and the CIT(A) in which it was held that in the process, the assessee was claiming double benefit, observed as under:-

> "..... We find that the both AO and CIT(A) had completely ignored the fact that under "Adjustment to Purchase Price" the purchaser reassigned some debits amounting to Rs. 2,44,221,60/- to the assessee and assessee reduced the same from the purchase price which is clearly mentioned in para 7.1 of the assessment order. In our view the finding of AO and the CIT(A) that the debts were transferred as part of net current assets in the slump sale and the assessee would get double benefit if allowed deduction in respect of write off the book debts were wrong and against the facts of the case. The assessee had rightly written off the debits and the same were admissible under section 36(1)(vi) of the Act. In view of the above facts, the appeal of the assessee on this ground is allowed and the AO is directed accordingly."

8. Thus, the Tribunal on facts held that the assessee had not claimed any double benefit and the bad debt was required to be allowed as an admissible deduction under Section 36(1) of the Act. We see no error in the view of the Tribunal..

9. The last question I.e Question No. (d) pertains to the disallowance under Section 40(a)(ia) of the Act on account of non deduction of tax at source by the assessee while making payment to Videsh Sanchar Nigam Limited towards leased line charges. On merits, the Revenue had placed reliance on a decision of this Court in case of **CIT Vs. Kotak Securities**

Ltd[1]. The Tribunal, however, held that the amount in question was below Rs. 10 Lakhs which was a minimum monetary limit enabling the Revenue to prefer appeal against the Commissioner's Appellate orders before the Tribunal. Revenue argues before us that the Tribunal should have seen the monetary limit of the combined appeals of the assessee as well as the Revenue arising out of the common judgment of the CIT(A) pertaining to the assessee for the same assessment year. In our opinion, this question is not required to be examined in view of the fact that the decision of this Court in case of Kotal Securities Limited (supra) has been reversed by the Supreme Court in the case of **CIT Vs. Kotak Securities Ltd**[2]. Resultantly, on the merits also, the Revenue would have no ground to succeed.

10. In the result, the Appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**

1 [2012] 20 taxmann.com 846 (Bombay)
2 [2016] 67 taxmann.com 356 (SC)