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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 159/2022 & CM APPL. Nos. 23837-38/2022

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI - 07
..... Appellant

Through: Mr. Sunil Aggarwal, Sr. Standing Counsel, Mr. Tushar Gupta, Junior Standing Counsel with Mr. Utkarsh Tiwari, Advocate.

versus

M/S PUNJAB NATIONAL BANK (ERSTWHILE UNITED BANK OF INDIA) ..... Respondent

Through: None.

% Date of Decision: 20th May, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CM APPL. 23837-38/2022

Exemptions allowed, subject to all just exceptions.

Accordingly, applications stand disposed of.

ITA 159/2022

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') against the impugned final judgment and order dated 19th February, 2020 passed by the Income Tax Appellate Tribunal (in short "the Tribunal") in I.T.A. No. 74/Kol/2018.

Brief Facts:

2. M/s Punjab National Bank (Erstwhile United Bank of India) i.e., Respondent/Assessee (hereinafter referred to as 'Respondent') filed its return of income under Section 139(1) of the Act on 4th October, 2010 for Assessment Year 2010-11. The case was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) and a notice under Section 143 (2) of the Act was served upon the Respondent. Subsequently, notices under Section 142 (1) of the Act were also issued to the Respondent and the same were complied.

3. The Jurisdictional Assessing Officer (JAO) of the Respondent passed an assessment order under Section 143 (3) of the Act dated 28th March, 2013 for the relevant Assessment Year 2010-11, wherein several additions were made to the returned income of Respondent by JAO.

4. Two of the additions made by the JAO *vide* order dated 28th March, 2013, which have been deleted by the CIT (Appeals) and the Tribunal are the subject matter of the present appeal. The said two additions are:

(a) Disallowance of Rs. 16,85,08,240/- made by JAO u/s. 40(a)(ia) of the Act for non-deposit of TDS.

(b) Disallowance of Rs. 19,06,57,848/- made by JAO u/s. 14A of the Act read with Rule 8D of the Income Tax Rules ('the Rules').

5. The disallowance made by the JAO under Section 14A of the Act read with Rule 8D of the Rules comprised of two components:

i. Rs. 17,48,97,348/- under Rule 8D(2)(ii); and

ii. Rs. 1,58,00,000/- under Rule 8D(2)(iii).

6. The Respondent filed an appeal before the CIT (Appeals) challenging *inter-alia* the aforesaid disallowances, which was partly allowed. The disallowance made by the JAO under Section 14A of the Act read with Rule 8D(2)(ii) of the Rules was deleted for a sum of Rs. 17,48,97,348/-. However, the deduction made by the JAO under Section 40(a)(ia) of the Act and section 14A read with Rule 8D(2)(iii) of Rs. 1,58,00,000/- was confirmed by CIT (Appeals).

7. It is pertinent to mention that the Appellant i.e. Revenue (hereinafter referred to as 'Appellant') did not file any appeal against the order passed by CIT (Appeals) deleting the disallowance made by the JAO under Section 14A of the Act read with Rule 8D(2)(ii).

8. Aggrieved by the order of the learned CIT (Appeals) confirming the above noted disallowances under Section 40(a)(ia) of the Act for non-deposit of TDS and section 14A read with Rule 8D(2)(iii) on account of exempt income, the Respondent preferred an appeal before the Tribunal.

9. The Tribunal *vide* its impugned order dated 19th February, 2020 allowed the appeal of the Respondent with respect to the aforesaid disallowances. With respect to disallowance made by the JAO under Section 40(a)(ia) of the Act the Tribunal held as follows:

> *"…12. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other*

materials available on record. Before us, ld. Counsel for the assessee has reiterated the submissions made before the ld. CIT(A) and on the other hand the ld. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

We note that the said TDS was paid before the filing of return of income u/s. 139(1) of the I.T. Act, therefore no addition should be made for that we rely on the judgement of Hon'ble Calcutta High Court in the case of CIT vs. Virgin Creations GA 3200/2011 wherein it was held that the said TDS should be allowed.Respectfully following the decision of jurisdictional High Court, we hold that since the assessee has deducted and deposited tax on contractual payments under consideration before the due date of filing of return of income,disallowance u/s 40(a)(ia) is not warranted, therefore, we delete the disallowance of Rs. 16,85,08,240/-…"

With respect to disallowance made by the JAO under Section 14A read with Rule 8D(2)(iii) the Tribunal held as follows:

"…14. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 19.11.2018, passed by the Division Bench of Delhi Tribunal in the case of Nice Bombay Transport (P) Ltd,in ITA No.1331/Del/2012for the Assessment Year 2008-09 whereby the issue relating to section 14A read with rule 8D in respect of shares held in stockhas been discussed and adjudicated in favour of assessee. Learned counsel for the assessee submitted that the present issue is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

16. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of ITAT, New Delhi vide order dated 19.11.2018.

……..

We note that the issue is squarely covered in favour of assessee by the judgment of Co-ordinate Bench of ITAT New Delhi in the case of Nice Bombay Transport Pvt. Ltd. (supra) therefore, respectfully

> *following the judgment of Co-ordinate Bench, we delete the addition of Rs. 1.58 crores…."*

10. The Tribunal while deleting disallowance of Rs. 1,58,00,000/- has also placed reliance on the judgment of the Supreme Court which has categorically held that in the case of a bank which holds the shares as stock-in-trade, the provisions of Section 14A are not attracted.

11. Being aggrieved, the Appellant has preferred the present appeal. It is the contention of the learned counsel for the Appellant that the Tribunal fell in error by deleting the disallowance of Rs. 16,85,08,240/- made by JAO under Section 40(a)(ia) of the Act.

12. In this regard, it is noted that the Tribunal has observed that the Respondent had duly deposited the Tax Deducted at Source (TDS) with the Government by the due date for filing the return of income.

13. The said finding of the Tribunal returned after perusing the documents furnished by the Respondent cannot be disputed in the present appeal. Learned counsel for the Appellant has not brought on record any material to dislodge the said finding of fact returned by the Tribunal. Since the deposit of TDS was made within the time permitted, the Tribunal is right in holding that the said expense incurred by the Respondent cannot be disallowed. In this regard, findings of the Tribunal are in conformity with the judgment of the Supreme Court in the case of ***Commissioner of Income Tax v. Calcutta Export Company reported in 2018 404 ITR 654 (SC)*** and in this regard paragraph 30 of the said judgment is relevant:

> *"...30) Hence, in the light of the forgoing discussion and the binding effect of the judgment given in Allied Motors (supra), we are of the view that the amended provision of section 40(a)(ia) of the Income-tax Act should be interpreted liberally and equitably*

> *and applies retrospectively from the date when section 40(a)(ia) was inserted i.e., with effect from the assessment year 2005-06 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the section recorded above shows that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its returns on August 1, 2005, i.e., in accordance with the due date under the provisions of section 139 of the Income-tax Act, hence, is allowed to claim the benefit of the amendment made by the Finance Act, 2010 to the provisions of Section 40(a)(ia) of the Income-tax Act..."*

14. The finding of the Tribunal is, therefore, correct in law and no substantial question of law with respect to Section 40(a)(ia) of the Act, arises.

15. The Appellant in the present appeal has also challenged the deletion of the disallowance under Rule 8D(2)(ii) of Rs. 17,48,97,348/-. The said disallowance was deleted by the CIT (Appeals) *vide* order dated 28th June, 2017. The CIT (Appeals) noted that this issue was also covered by the order of the ITAT in the case of Respondent in Assessment Year 2009-10. It was noted that in the said Assessment Year the Tribunal had observed that no part of the borrowed funds were utilised by the Respondent for making investments yielding tax free income. It was also observed that the Assessing Officer had not brought on record any nexus between the borrowed funds and amounts invested by the Respondent. The Tribunal, therefore, held that the disallowance made by the Assessing officer under Rule 8D(2)(ii) of the Rules was not permissible. The learned Counsel for the Appellant has not disputed the aforesaid facts and on this ground additionally, no challenge can be maintained to the deletion of the

disallowance made under this Rule.

16. The learned counsel for the Appellant has contended that the decision of the Tribunal deleting the addition of Rs. 1,58,00,000/- made by the JAO under Section 14A of the Act read with Rule 8D(iii) is incorrect since the said amount was offered for disallowance *suo moto* by the Respondent.

17. In this regard, the Tribunal has observed that the facts of the Respondent in the present appeal are similar to the order passed by another Bench of the Tribunal in the case of ***Nice Bombay Transport Pvt. Ltd. (ITA No. 1331/Del/2012)*** wherein issue relating to Section 14A of the Act read with Rule 8D of the Rules in respect of shares held in stock has been discussed and adjudicated in favour of the Assessee therein.

18. Learned counsel for Appellant has submitted that the facts of the assessee in the case of ***Nice Bombay Transport Pvt Ltd.*** (*supra)* are distinct from the case at hand, however, no submissions have been made with respect to the said 'distinguishing facts'. On the contrary, it is noted that the Supreme Court has held in the case of ***Maxopp Investment Ltd v. Commissioner of Income Tax 2018 402 ITR 640 (SC)*** that in cases where the main purpose for investing in shares was to hold the same as stock-in-trade, the expenditure incurred by the Respondent shall be permissible to be deducted from its gross income. The relevant paragraph of the judgment of the Supreme Court reads as under:

> *"…40 It is to be kept in mind that in those cases where shares are held as "stock-in-trade", it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee-company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The*

> *situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee-company. In that case, whenever dividend is declared by the investee-company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove…."*

19. The Supreme Court in this judgment upheld the decision of the High Court of Punjab and Haryana arising under Section 14A of the Act with respect to an assessee bank. It further held that when the shares were held as stock-in-trade and not as investment particularly by banks, the main purpose was to trade in those shares and earn profits there from and therefore Section 14A of the Act was not attracted and the expenditure could not be disallowed. The judgment of ***Maxopp Investment Ltd*** *(supra)* has been duly noted by the Tribunal in its impugned order and in our opinion the Tribunal has correctly disallowed the disallowance under Rule 8D(2)(iii) of the Rules.

20. In the present case as well, the Tribunal has considered that the Respondent was holding the shares as a stock-in-trade and has, therefore, disallowed the addition made by the JAO. Learned counsel for the Appellant has not disputed the fact that the shares are held as stock-in-trade by the Respondent.

21. In the aforesaid view of the matter, the questions of law proposed by the Appellant do not arise for consideration either in fact or in law in view of

the judgments of the Supreme Court, which have conclusively decided the questions sought to be canvassed by the Appellant.

22. The appeal is accordingly dismissed.

23. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

MAY 20, 2022/msh