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

+ ITA 496/2010

% **Date of Decision :** 3rd February, 2012.

COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Sanjeev Sabharwal, Sr.Standng Counsel.

versus

INDIAN SUGAR EXIM CORPORATION LTD Respondent
Through: Dr.Rakesh Gupta, Mr.Ashwani Taneja
and Ms.Rani Kiyala, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

This appeal pertains to the assessment year 2001-02 and is directed against the order dated 5th December, 2008 passed by the Income Tax Appellate Tribunal (tribunal, for short). Three separate issues are raised in the present appeal and they have been discussed under three separate headings.

ISSUE NO. 1 – Valuation of Closing Stock

2. Three substantial questions of law are framed:-



- “1. Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal was correct in law and on facts in deleting the addition made by Assessing Officer on account of rejection of method of valuation of closing stock as followed by the assessee ?
2. In case the answer to question No.1 above is in the negative whether the change in the method of valuation was bonafide?”
3. Whether the Income Tax Appellate Tribunal was right in accepting the net realizable value as declared by the respondent-assessee and was right in not adopting the cost price for computation of the closing stock?”
3. Similar questions of law have been decided in ITA No. 645/2005 and other connected matters, in the case of respondent assessee vide decision dated 30th January, 2012.
4. For the reasons stated in the said decision, the above three questions of law are answered in favour of the respondent assessee and against the Revenue.

Issue No. 2 - Deduction under Section 14A

5. Learned counsel for the Revenue submits that in view of the decision dated 18.11.2011 in ITA No. 687/2009 and other connected matters in *Maxopp Investment Ltd. Vs. Commissioner of Income-Tax*,



New Delhi and Ors. holding that direct and indirect expenses in relation to exempt income have to be excluded from the allowable expenses, the matter may be remitted to the Assessing Officer.

6. We have considered the said contention in the light of facts of the present case and examined whether an order of remit is required. The Assessing Officer, during the course of assessment proceedings noticed that the assessee had earned dividend income of Rs.1,25,52,431/- and an interest of Rs.62,82,323/- on tax free bonds issued in lieu of UTI 64. The assessee had submitted that only activity or expenditure involved in relation to the exempt income was on deposit of cheques and therefore no apportionment of expenditure was necessitated. It was further stated that sometimes dividend/interest was credited electronically. The assessee had pleaded that expenditure incurred and shown in profit & loss did not have any direct nexus with the exempt income earned and there was no commission or remuneration paid to a banker or any other person for realizing dividend or tax free bond interest.

7. The Assessing Officer, however, did not accept the said contention, inter alia, observing as under:-



“The assessee has shown total receipt of Rs.165,62.72 lakhs which inter alia comprises of income of Rs.188.34 lakhs from tax free bonds/mutual funds. The assessee has incurred expenditure of Rs.189.93 lakhs being the bank interest paid and Rs.599.44 lakhs being the administrative expenses. Looking into the nature and extent of income, it is seen that expenses have been incurred for the purposes of earning the aforementioned income for the following reasons:-

(i) A large sum of money has been invested in shares on which dividend has been earned. The interest paid on such amount has a direct nexus with the dividend. Hence the same are allocated proportionately on the basis of funds invested in shares.

(ii) Administrative expenses also have direct relation with the earning of the dividend because such expenses have been incurred for earning interest and dividend income besides other income which is too meager. Such expenses are allocated to the dividend income on the basis of percentage of dividend income to total income.

Under these circumstances, the apportionment of expenses u/s 14A is carried out as under:-

(Figures in Rupees)

<i>(1) Interest paid (Rs.1,89,93,385/-)</i>		
<i>Dividend</i>	<i>1,25,52,491/-</i>	
<i>Interest on tax free bond</i>	<i>62,82,329/-</i>	<i>1,88,34,820/-</i>
<i>Amount invested to earn the above</i>		<i>78,29,33,269/-</i>
<i>Total funds available</i>		<i>1,55,67,77,758/-</i>
<i>[General surplus + Loans]</i>		
<i>[1460745195 + 96032563]</i>		
<i>Interest related to exempted income</i>		
	$= 18993385 \times \frac{782933269}{1556777758}$	<i>= 95,52,136/- (A)</i>



(2) *Administrative expenses (Rs.5,99,44,162/-)*

Total Receipts 1,65,62,72,129/-

Exempted Receipts 1,88,34,820/-

*Administrative expenses allocated
to exempted income*

$$= \frac{59944162 \times 18834820}{1656272129} = 6,81,673/- \text{ (B)}$$

Total (A+B) = 1,02,33,809/-

Thus, disallowance of administrative and interest expenses of Rs.1,02,33,809/- is made u/s 14A.”

8. The aforesaid findings were challenged by the respondent/assessee in appeal. A specific plea was taken that borrowed funds were not utilized for the purpose of purchase of units in the mutual funds or for earning tax free dividend income or for the purchase of units of UTI 64 that had resulted in issue of tax free interest bonds. It was stated that the respondent/assessee had availed of a specific bank credit facility for purchase and export of sugar and the said loan facility could not be utilized for any other purpose. CIT(A) called for a remand report and thereafter held as under:-

“On going through the ledger account the contention of the appellant counsel is found to be correct that the expenditure basically relates to three limits taken by it from Syndicate Bank, Punjab National Bank & Maharashtra State



Cooperative Bank and is in relation to purchase and export of sugar. The appellant counsel has also filed the confirmations from the Punjab National Bank that the limit has been taken for opening of the LC's, from Maharashtra State Cooperative Bank for packing credit limit and from Syndicate Bank export credit limit. In view of the above facts, as no interest has been paid by the appellant company for making investment in the earning of the exempt income the AO has wrongly disallowed a sum of Rs.95,52,136/-on account of interest and the same is deleted. Regarding the proportionate disallowance of administrative expenses to the amount of Rs.6,81,673/- as it cannot be said that no expenses had been incurred under this head for earning the exempt income the same has been rightly disallowed by the assessing officer. Therefore, the addition of Rs.95,52,136 is deleted and addition of Rs.6,81,673/- is confirmed.”

9. The Revenue preferred an appeal against the deletion of addition of Rs.95,52,136/-. The Tribunal went into the question of deletion of Rs.95,52,136/- and has recorded the following findings:-

“Coming to the facts of this case, it is quite clear the no amount was borrowed at the beginning of the year and, thus, it cannot be said that any borrowed funds were used for investment in bonds or shares held at the beginning of the year. The borrowings amounted to Rs.9,60,32,563/- at the end of the year. The case of the learned counsel was that this amount represented internal accruals by way of profits and also sale proceeds of similar investments. This case could not be rebutted by the learned DR. The finding of the learned CIT(A), on basis of the certificates from the banks, was that no part of the interest could be said to be in relation to the dividend income or tax-free interest income as the whole of the interest was paid in relation to packing credit facility. This was certified by the banks. This finding also could not be displaced by the learned DR. It was held by the Tribunal



that the onus to prove that the expenditure was incurred in relation to taxable income was on the assessee. According to us, this onus has been discharged having regard to the evidence on record. The case of the learned DR was that the bank accounts had to be seen on a day-to-day basis, which was not done by the assessee. We are unable to agree with this argument of the learned DR for the reason that the assessee has proved that the whole of the interest was paid in relation to packing credit limit, for which additional evidence was filed before the learned CIT(Appeals), and which was rightly admitted by him. He decided the matter after hearing the AO also in the matter. His finding could not in any way be displaced by the learned DR before us. Therefore, it is held that no part of interest expenditure could be disallowed u/s 14A.”

10. In view of the aforesaid factual position, we do not find that an order of remit on the question of disallowance of interest paid u/s 14A of the Act is required to be passed. The instruments resulting in tax free income were purchased the earlier years, whereas the bank loan was availed of in the present year. Further the bank loan was for a specific purpose, i.e. export of sugar and could not be used for any other purpose. Thus on the said aspect no order of remit is required and necessary. We may notice here that as far as administrative expenses is concerned, the matter has been remitted back to the Assessing Officer. On remand, when the Assessing Officer examines the said aspect, he can and will have right



to take into account all other expenses and consider whether there was any direct or indirect nexus with the earning of the exempted income, but he shall not be examine the interest expenditure in question.

Issue No. 3 – Interest under Section 234 D

11. Another issue raised by the Revenue pertains to charging of interest u/s 234D. The assessment year in question is 2001-02. This question is covered in view of the decision of *Director of Income Tax Vs. Jacobs Civil Incorporated* (2011) 330 ITR 578 (Delhi). In this case it has been held that Section 234D is applicable only from the assessment year 2004-05 onwards and is not applicable to the earlier assessment years.

12. The appeal stands disposed of. No orders as to costs.

SANJIV KHANNA, J

R.V.EASWAR, J

FEBRUARY 03, 2012
mr/kkb