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

+ **ITA 518/2022**

PR. COMMISSIONER OF INCOME TAX, DELHI-7..... Appellant

Through: Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vipul Agrawal and Mr Parth Semwal, Jr. Standing Counsels.

versus

M/S PUSHPANJALI FINCON PVT. LTD.

..... Respondent

Through:

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE MINI PUSHKARNA

ORDER

08.12.2022

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[Physical Hearing/Hybrid Hearing (as per request)]

1. This is an appeal preferred by the appellant/revenue against the order dated 01.10.2019 passed by the Income Tax Appellate Tribunal [in short "Tribunal"]. The Tribunal *via* the instant appeal has proposed the following questions of law:

"A. Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law in deleting the disallowance of Rs. 25.30 crores made u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962, without appreciating that the direct interest expenditure incurred by the assessee on borrowed funds to make investments in relation to income which does not form a part of the total income under the Income Tax Act, 1961 is not allowable under section 14A of the Act?"



B. Whether disallowance u/s 14A(1) of the Income Tax Act, 1961 would stand attracted even if such income, i.e. income not includible in the total income, is not actually earned, subject to expenditure relatable to such income having been incurred?

C. Whether the Ld. ITAT erred in law in ignoring the observations of the Hon'ble Supreme Court in CIT vs. Walfort Share & Stock Brokers (P.) Ltd. 326 ITR 1 (SC), followed in the case of Godrej & Boyce Mfg. Co. Ltd. vs. Dy. CIT [2017] 81 taxmann.com 111 (SC), in the context of the Memorandum explaining the provisions Finance Bill, 2001 (introducing section 14A) as well as the Notes to the Clauses presented along with the said Bill, as follows: "The insertion of section 14A with retrospective effect is the serious attempt on the part of Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001 dated November 22, 2001). In other words, section 14A clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income " ?

D. Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law in holding that no disallowance of Rs. 25.30 crores being the interest expenditure can be made u/s 36(l)(iii) of the Income Tax Act, 1961 since the interest expenditure and interest income were directly linked to the business of the assessee, without appreciating that as per the Memorandum of Association of the Company, its business activity relates to consultancy in financial matters and not to earn income from investments made, and that the assessee itself has shown its interest receipt as :other income: in its computation of income?"

2. Mr Zoheb Hossain, learned senior standing counsel, who appears on behalf of the appellant/revenue cannot but accept, that the first three questions i.e., A, B and C are covered by the judgment of a coordinate



Bench of this Court rendered in *Cheminvest Ltd. v. CIT* [2015] 378 ITR 33.

3. Insofar as the fourth question is concerned i.e., the question marked as D hereinabove, issue notice to the respondent/assessee by all modes, including e-mail.

4. List the matter on 29.03.2023.

5. The notice issued to respondent/assessee will be accompanied by a copy of the order passed today.

6. Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

RAJIV SHAKDHER, J

MINI PUSHKARNA, J

DECEMBER 8, 2022

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Click here to check corrigendum, if any