IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE TWENTY EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

INCOME TAX TRIBUNAL APPEAL NO: 228 OF 2007

Income tax Tribunal Appeal under Section 260-A of the Income tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Hyderabad Bench "A" Hyderabad in ITA No. 188 / Hyd./ 2004 for Assessment Year 1999 – 2000 dated 27-02-2007 preferred against the order of the Commissioner of Income Tax (Appeals) –II , Hyderabad dated 06-11-2002 in ITA No. 33 / CIT (A) –II/ 02-03, preferred against the order of the Asst. Commissioner of Income Tax , Circle 1 (3), Hyderabad dated 28-03-2002 in PAN /GIR No. A-161.

Between:

Andhra Bank Financial Services Limited, First Floor, 4-5-1 to 23, Andhra Bank Buildings, Sultan Bazar, Hyderabad-195

...APPELLANT

AND

The Commissioner of Income Tax-I, Aayakar Bhavan, Basheerbagh, Hyderabad-500 001

...RESPONDENT

Counsel for the Appellant: SRI. C. P. RAMASWAMI

Counsel for the Respondent: SRI J. V. PRASAD (Sr. SC FOR INCOME TAX)

The Court delivered the following Judgment:

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

INCOME TAX TRIBUNAL APPEAL No.228 of 2007

JUDGMENT: *(Per the Hon'ble Sri Justice J.Sreenivas Rao)*

Dr. C.P.Ramaswami, learned counsel for the appellant.

Mr. J.V.Prasad, learned Senior Standing Counsel for Income Tax Department for the respondent.

2. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as, "the Act"), has been filed by the assessee. The subject matter of the appeal pertains to the assessment year 1999-2000. The appeal was admitted by a Bench of this Court on the following substantial questions of law:

> "i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that there was no debatable issue with regard to the amount of interest disallowable u/s.14A of the I.T.Act, 1961 when the issue

got concluded before the first appellate authority at the time when the ground was dismissed as not pressed?

ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the first appellate authority was justified in passing the Rectification Order u/s.154 when the matter is highly debatable?"

3. Facts giving rise to filing of this appeal briefly stated are that the assessee was incorporated in February, 1991, as a Private Limited Company and since April, 1991, as a Public Limited Company. The assessee is a 100% subsidiary company of Andhra Bank, a nationalised bank, which is now merged with Union Bank of India. The assessee is a non-banking financial services company engaged in the business of financial services like leasing, hire purchase activities etc.

4. The assessee filed the return of income for the assessment year 1999-2000. In the previous year relevant to the assessment year 1999-2000, the assessee had earned income of Rs.10,73,07,123/- on tax free bonds. The assessee claimed that the aforesaid income is exempt

from tax in lieu of Section 10(5) of the Act. An order of assessment was passed by the Assessing Officer on 28.03.2002 by which the total income of the assessee was assessed at Rs.7,44,42,610/- as against the loss returned in the revised return of Rs.2,13,12,326/-. The Assessing Officer made disallowance of Rs.1,10,680/-. The said disallowance was computed without taking into account the payment made to M/s.Tamil Nadu Newsprint and Papers Limited. Since the claim to deduct the amount in computation of income was rejected entirely, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-II, Hyderabad (hereinafter referred to as, "the CIT (A)"). The claim with regard to disallowance made under Section 14A of the Act was not pressed by the assessee before the CIT (A). By an order dated 06.11.2002, the CIT (A) partly allowed the appeal preferred by the assessee. The CIT (A) issued a notice on 01.08.2003 to the assessee seeking to rectify the order passed in appeal. The assessee objected to the proposed rectification and filed a statement on 19.08.2003.

5. The CIT (A), in an order passed under Section 154 of the Act, dated 29.12.2003, rejected the objections preferred by the assessee and directed the Assessing Officer to enhance disallowance under Section 14A of the Act.

6. The assessee thereupon filed an appeal i.e., I.T.A.No.188/Hyd/2004 before the Income Tax Appellate Tribunal, Bench 'A', Hyderabad (hereinafter referred to as, "the Tribunal"). The Tribunal, by an order dated 27.02.2007 has dismissed the appeal. Hence, this appeal.

7. Learned counsel for the assessee submitted that the issue with regard to disallowance of amount under Section 14A of the Act was highly debatable issue and therefore, the same could not have been taken up in exercise of powers under Section 154 of the Act. It is further submitted that an order of enhancement could not have been passed by the CIT (A) in the garb of an order of rectification under Section 154 of the Act. It is urged that the issue with regard to the disallowance under Section 14A of the Act attained finality on adjudication of the appeal by an order dated 06.11.2002 passed by the CIT (A).

It is also contended that the length of show cause notice issued by the CIT (A) itself shows that the alleged mistake is not a mistake apparent from the record. In support of the aforesaid submissions, reliance has been placed on the decisions in **T.S.Balaram, Income-Tax Officer, Company Circle IV, Bombay v. M/s. Volkart Brothers, Bombay**[1], **MEPCO Industries Limited, Madurai v. Commissioner of Income Tax**[2], **Maxopp Investment Ltd. v. Commissioner of Income Tax**[3] and **South Indian Bank Limited v. Commissioner of Income Tax**[4].

8. On the other hand, learned counsel for the Revenue submitted that the assessee has accepted the disallowance under Section 14A of the Act and therefore it was not a debatable issue. It is contended that the proviso to Section 14A(3) of the Act was incorporated with a view to put quietus to completed assessment and the same does not apply to an ongoing assessment. It is submitted that the orders passed by the CIT (A) as well as the Tribunal have

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[1] [1971] 82 ITR 50 (SC) : (1971) 2 SCC 526
[2] (2010) 1 SCC 434
[3] (2018) 15 SCC 523 : [2018] 402 ITR 640 (SC)
[4] (2021) 10 SCC 153

been passed by assigning valid and cogent reasons and no substantial questions of law arise for consideration.

9. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of the relevant statutory provisions, which are reproduced below for the facility of reference.

"154. Rectification of mistake.

[(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,-

(a) amend any order passed by it under the provisions of this Act;]

[(b) amend any intimation or deemed intimation under sub-section (1) of section 143.]]

[(c) amend any intimation under sub-section (1) of section 200A.]

[(d) amend any intimation under sub-section (1) of section 206CB]

[(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in

force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.]

(2) Subject to the other provisions of this section, the authority concerned-

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [* * *] [Commissioner (Appeals)] by the [Assessing Officer] also.

[* * *]

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Subject to the provisions of section 241, where any such amendment has the effect of reducing the assessment, the [Assessing Officer] shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund

already made, the [Assessing Officer] shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186, no amendment under this section shall be made after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed].

(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,-

(a) making the amendment; or

(b)refusing to allow the claim.]"

10. After having noticed the relevant statutory provisions, we may advert to the facts of the case in hand. The assessee had furnished three different calculations of interest to be disallowed under Section 14A of the Act before the Assessment Officer depending upon the taxability of interest and financial charges paid to the

M/s.Tamil Nadu Newsprint and Papers Limited of an amount of Rs.9,35,33,906/- through letter dated 21.03.2002. The Assessing Officer has disallowed an amount of Rs.1,10,680/- under Section 14A of the Act accepting the third alternative calculation method, by its order dated 28.03.2002. Aggrieved by the same, the assessee filed appeal before the appellate authority and during the course of appeal, the assessee has not pressed the ground of disallowance made by the Assessing Officer and the appellate authority passed order on 06.11.2002 in I.T.A.No.33/CIT(A)-II/02-03. Thereafter, the appellate authority while exercising the powers conferred under Section 154 of the Act, issued notice on 01.08.2003 to the assessee. Pursuant to the said notice, the assessee filed statement on 19.08.2003 objecting the proposed rectification. The appellate authority after considering the said objections and after perusal of the records partly allowed the appeal, by its order dated 29.12.2003. Questioning the said order, the assessee filed appeal *vide* I.T.A.No.188/Hyd/2004 and the same was dismissed on 27.02.2007.

11. It is relevant to place on record that the appellate Tribunal after considering the contentions of the respective parties and evidence on record specifically held the appellate authority while discharging his quasi judicial functions rightly passed the order basing upon the calculations made by the assessee holding that disallowance under Section 14A of the Act is limited to Rs.2,77,80,538/- and the same cannot be treated as an enhancement of assessment and further held that neither assessee nor Assessing Officer have mentioned particular figure without linking the same to the allowance of the interest paid and when the allowances of interest has not reached finality, it cannot be said that quantum of disallowance under Section 14A has finally be arrived at and also held that the first appellate authority has omitted to consider the aspect of amount disallowable under Section14A of the Act and the said mistake was rectified by the Commissioner in the appeal while exercising the power conferred under Section 154 of the Act and the same is permissible.

12. In **South Indian Bank Limited** (supra) by relying the judgment of **Maxopp Investment Ltd** (supra), the Hon'ble Supreme Court held that the purpose behind Section 14A of the Act, by not permitting deduction of the expenditure incurred in relation to income, which does not form part of total income, is to ensure that the assessee does not get double benefit. Once a particular income itself is not to be included in the total income and is exempted from tax, there is no reasonable basis for giving benefit of deduction of the expenditure incurred in earning such as income.

13. In **T.S.Balaram** (supra) and **MEPCO Industries Limited** (supra) , the Hon'ble Supreme Court held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not "mistake apparent from the record".

14. The above said judgments are not applicable to the facts and circumstances of the case on the ground that the

assessee had filed three calculations of the interest to be allowed under Section 14A of the Act before the Assessing Officer to determine the total income and allowance of interest paid to the M/s.Tamil Nadu Newsprint and Papers Limited. Hence, the contention of the learned counsel for the appellant that the provisions of Section 14A of the Act is not applicable to the assessee is not tenable under law, especially the appellate authority passed order dated 29.12.2003 rectifying the disallowance amount under Section 14A of the Act basing upon the calculations made by the assessee and the same cannot be treated as enhancement of assessment.

15. It is pertinent to mention here that the assessee itself had accepted the disallowance under Section 14A of the Act and therefore it was not debatable issue. The appellate authority after following the due procedure as contemplated under the law including the issuance of notice and after considering the objections of the parties rectified the error and made disallowance of Rs.2,77,80,528/- and the same is within the purview of the

provisions of the Act. Hence, substantial questions of law are answered against the assessee.

16. In view of the preceding analysis, we do not find any merit in this Income Tax Tribunal Appeal. Accordingly, the same fails and is hereby dismissed.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

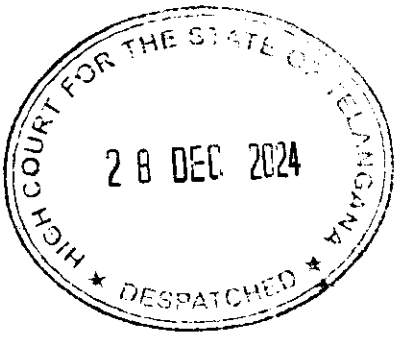
To

1. The Income Tax Appellate Tribunal, Hyderabad Bench "A" Hyderabad
2. The Commissioner of Income Tax (Appeals) –II , Hyderabad
3. The Asst. Commissioner of Income Tax , Circle 1 (3), Hyderabad
4. One CC to SRI. C. P. RAMASWAMI, Advocate [OPUC]
5. One CC to SRI. J. V. PRASAD (Sr. SC FOR INCOME TAX), Advocate [OPUC]
6. Two CD Copies

kul/DL

HIGH COURT

DATED:28/11/2024



JUDGMENT

ITTA.No.228 of 2007

DISMISSING THE ITTA

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09/12/24