**(2016) 10 KAR CK 0100**

**In the Karnataka High Court**

**Case No :** I.T.A. No. 67 of 2015

Commissioner of Income-Tax APPELLANT

Vs

Brindavan Beverages P. Ltd. RESPONDENT

**Date of Decision :** 26-10-2016

**Acts Referred:**
Income Tax Act, 1961 — Section 14A

**Citation :** (2017) 393 ITR 261

**Hon'ble Judges :** Jayant Patel and Aravind Kumar, JJ.

**Bench :** Division Bench

**Advocate :** K. V. Aravind, Advocate, for the Appellants; A. Shankar and M. Lava, Advocates, for the Respondent

**Final Decision :** Dismissed

## Judgement

Jayant Patel, J.—The appellant-Revenue has preferred the present appeal by raising the following substantial questions of law :

1. Whether the Tribunal was correct in deleting the disallowance under section 14A read with rule 8D(2)(ii) and 8D(2)(iii) in respect of investments in assets yielding tax free income, holding that the provisions of section 14A cannot be invoked unless and until there is a receipt of exempted income for the concerned assessment year without appreciating the provisions of section 14A read with rule 8D(2)(ii) in its true sense and right spirit and the fact that when the interest expense incurred cannot be directly attributed to any particular income or receipts, provisions of rule 8D(2)(ii) are automatically applicable ?

2. Whether the Tribunal was correct in not considering the Board''s Circular No. 5 of 2014, dated February 11, 2014 (See (2014) 361 ITR (St.) 94) which has made it clear that the disallowance under section 14A read with rule 8D has to be made even where the taxpayer in a particular year has not earned any exempted vis-a-vis dividend income ?

2. The learned counsel appearing for the appellant submitted that as per the

 

instructions received by him since the matter is directed by the Tribunal to the lower authority, he is not pressing question Nos. 1 and 2.

3. However, he submitted that inadvertently he could not formulate and place on record another question for disallowance of interest, which was contended before the Tribunal and he submitted that he may be permitted to add a question for disallowance of the interest out of the total interest claim considering it non specific and for such purpose he has tendered addition of question as under :

"Whether the Tribunal was correct in holding that the assessee is entitled to deduction of interest on loans when the assessee has extended interest-free loans to directors and sister concerns and when the assessee has failed to establish the nexus between the interest free funds available with it and non-interest bearing advances/loans recorded perverse finding ?"

4. We permit the learned advocate to amend the memo of appeal by raising the aforesaid question.

5. As the learned advocate has restricted the present appeal only on the new question formulated and as question Nos. 1 and 2 are not pressed, we find that only aspect to be considered is newly added question. The relevant discussion of the Tribunal on the aforesaid question is at paragraph Nos. 22 and 23 which reads as under :

"22. We have perused the orders and heard the rival contentions. Balance-sheet of the assessee placed at PB page 53, show its share capital reserved and surplus as under :

As on 31-3-2008

As on 31-3-2009

Increase

Share capital

24,53,000

24,53,000

Nil

Reserves and surplus

1,55,43,00,078

1,64,19,66,727

8,76,66,649

Total

1,55,67,53,078

1,64,44,19,727

8,76,66,649

There cannot be any dispute that at least share capital and reserves are own funds of the assessee. The position of the loans and advances as on March 31, 2008 and March 31, 2009 were as under :

31-3-2008

31-3-2009

Increase/decrease

Rs.

Rs.

Rs.

Loans/advances to directors and sister concern

26,17,61,903

19,26,50,342

(6,91,11,561)

Thus not only has the assessee own funds, well covering the loans and advances, but in the previous year the advances had gone down. In none of the earlier assessment years, viz., by 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 were any disallowance for interest on loans for non-business purpose made.

23. As for the decision of the Hon''ble Punjab and Haryana High Court in Abhishek Industries Ltd. (supra) is concerned, this was followed by the very same High Court, while confirming a similar disallowance in the case of Munjal Sales Corporation v. CIT (2008) 298 ITR 288 (P&H). The Hon''ble apex court reversed the latter in Munjal Sales Corporation v. CIT (2008) 298 ITR 298 (SC) and hence judgment in Abhishek Industries Ltd., will not further the Revenue''s case any way. On the other hand, the assessee is well supported by the decision of the Hon''ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra) as well as the Hon''ble Gujarat High Court in the case of Raghuvir Synthetics Ltd. (supra). We thus, do not find any reason to interfere with the order of the Commissioner of Income-tax (Appeals) in this regard. In the result ground 4 of the Revenue is dismissed."

6. The aforesaid discussion shows that the Tribunal has found that the decision upon which reliance has been placed by the Revenue in the case of the Punjab and Haryana High Court in Abhishek Industries Ltd., is already reversed by the apex court in the case of Munjal Sales Corporation v. CIT (2008) 298 ITR 298 (SC) and further the Tribunal has also found that the stand of the assessee is

supported by the decision of the Bombay High Court in the case of CIT v. Reliance Utilities and Power Ltd. (2009) 313 HR 340 (Bom) as well as the Gujarat High Court in the case of CIT v. Raghuvir Synthetics Ltd. (2013) 354 ITR 222 (Guj).

7. In our view, when both the issues are covered by the decisions of two High Courts, we do not find that any substantial question of law would arise for consideration, hence the appeal is dismissed.