IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Original Side)

Present:
The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Sambuddha Chakrabarti

I.T.A. No.264 of 2003

ISG Traders Ltd.
Versus
Commissioner of Income-tax, West Bengal-III, Kolkata.

For the Appellant: Mr. J.P. Khaitan,
Mr. Agnibesh Sengupta,
Mr. A.K. Dey.

For the Respondent: Mr. Dipak Kumar Shome,
Mr. Aniket Mitra.

Heard on: 15.09.2011.

Judgment on: 22nd September, 2011.

Bhaskar Bhattacharya, J.:

This appeal under Section 260A of the Income-tax Act, 1961 ("Act") is at the instance of an assessee and is directed against an order dated 29th May, 2002 passed by the Income-tax Appellate Tribunal, "C" Bench, Kolkata, in Income-tax Appeal being ITA No.349 (Kol) of 2002 for the Assessment Year 1998-99 by which the Tribunal allowed the appeal preferred by the Revenue and set aside the order passed by the CIT (Appeals).

Being dissatisfied, the assessee has come up with the present appeal.

The facts giving rise to filing of this appeal may be summed up thus:

a) The appellant is a public limited liability company within the meaning of the Companies Act, 1956 and is assessed to tax under the Act. The present appeal arises out of the assessment of the appellant under the Act for the Assessment Year 1998-99 for which the relevant previous year was the financial year ending on March 31, 1998.

b) The appellant is an investment company and carries on business of purchase and sale of shares and securities, money lending, trading in paper etc. and interest tax under the provision of Interest Tax Act, 1974 is levied upon the appellant. All the aforesaid business activities constituted one individual business and for the purpose of the said business the appellant from time to time borrowed capital in respect of which it paid interest.

c) Section 115 O was inserted in the Act with effect from June 1, 1997 and it provided that in respect of any amount deducted, distributed or paid by a company by way of dividend on or after June 1, 1997 the company should be charged to the additional tax @ 10 %. Sub-section (5) of Section 115 O provided that no deduction under any other

provision of the Act should be allowed to the company or a shareholder in respect of the amount which had been charged to tax under sub-section (1) or the tax thereon.

d) Finance Act, 1997 inserted Clause 33 in Section 19 of the Act to provide that any income by way of dividend referred to in Section 115 O should not be included in computing the total income of a previous year of any person.

e) During the previous year relevant to the Assessment Year 1998-99 the appellant received dividend of Rs.41,38,854/- in respect of shares held by it on which the tax was paid by the company concerned under Section 115 O of the Act. The appellant filed its return of income for the Assessment Year 1998-99 and in the said return, the appellant claimed that the entire interest expenditure of Rs.3,69,36,637/- incurred by it under Section 36(1)(iii) of the Act should be deducted.

f) In course of assessment proceedings, the Assessing Officer required the appellant to furnish the breakup of the cost relating to earning of the dividend when it was explained by the appellant that no cost could be apportioned to the dividend income. The Assessing Officer, however, sought to work out pro-rata interest expenditure as relatable to earning of dividend. Such dividend constituted 5.27 percent of the total turnover of the assessee and as such, the Assessing officer

assumed 5.27 percent of the interest expenditure amounting to Rs.19,14,940/- as relatable to earning of exempt dividend income and consequently, disallowed the said amount. The Assessing Officer, however, accepted the position that all other expenses incurred by the appellant were mainly for trading business carried on by it.

g) Being dissatisfied, the appellant preferred an appeal before the CIT (Appeals) and the said Appellate Authority by order dated January 8, 2002 allowed the appeal by accepting the appellant's contention that the interest expenditure incurred in respect of money borrowed for the purposed of the appellant's business was deductible under Section 36(1) (iii) of the Act and no part thereof could be apportioned as relatable to the dividend income.

h) Being dissatisfied, the Assessing Officer preferred an appeal before the Tribunal below and the Tribunal below by relying upon the provisions contained in Section 14A and sub-section (5) of Section 115 O of the Act held that exempt dividend income were not an allowable deduction. The tribunal further held that provision of Section 14A had the effect of nullifying the judgment of the Supreme Curt in the case of Rajasthan State Warehousing Corporation's vs. CIT, reported in (2000) 242 ITR page 450 which supported the claim of the assessee.

Being dissatisfied, the assessed has come up with the present appeal.

A Division Bench of this Court while admitting the appeal formulated the following substantial question of law:

> "Whether on the facts and in the circumstances of the case in view of the provisions of sections 115 O (5) and/or 14A of the Income Tax Act, 1961 and/or the Circular dated July 23, 2001, issued by the Central Board of Direct Taxes the appellant is entitled to deduction or interest amounting to Rs.19,14,940?"

Mr. Khaitan, the learned Senior Advocate appearing on behalf of the appellant, strenuously contended before us that the entire interest expenditure was incurred by the assessee for the purpose of its one and indivisible business of purchasing and selling of shares, securities, papers etc. and was allowable as deduction under Section 36 (1)(iii) of the Act in its entirety. According to Mr. Khaitan, simply because some dividend income accrued in favour of the assessee in respect of the shares held by it for the purpose of the business, no part of the interest expenditure could be apportioned as incurred in relation to the dividend income. Mr. Khaitan contends at the time of passing the assessment order by the Assessing officer, there being no existence of Section 14A of the Act, the Tribunal below committed substantial error of law in reversing the order passed by the CIT (Appeals) by relying upon the provisions contained in Section 14A of the Act.

According to Mr. Khaitan, as provided in the proviso to Section 14A of the Act, when the said section does not empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April, 2001, it necessarily follows that there is no scope of disturbing the original assessment order in this case by taking aid of Section 14A even at the instance of the Tribunal.

In order to appreciate the aforesaid question it will be profitable to refer to the provision contained in Section 14A of the Act which was inserted in the Act with retrospective effect from 1st April, 2002. The said provision is quoted below:

> ***14-A. Expenditure incurred in relation to income not includible in total income****.—For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act:*
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> ***Provided*** *that nothing contained in this section shall empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April, 2001.*

The explanatory note on provision of Section 14A as amended by Finance Act, 2002 has been given in Circular 8 of 2002 dated 27th August, 2002 stating as follows [(2002) 258 ITR (St.) 13 at 30, 31]:

> *"23. Amendment of Section 14A*
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> *"23.1 Through the Finance Act, 2001, a new section namely 14A was inserted in the Income-tax Act retrospectively with effect from 1st April, 1962 to clarify the intention of the Legislature that no deduction shall be allowed in respect of any expenditure incurred by an assessee in relation to income which does not form part of the total income under the Income-tax Act. The intention of inserting the new section retrospectively was to set the existing controversy on this issue at rest and not to unsettle the cases by raising the issue afresh.*
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> *"23.2 Through the Finance Act, 2002, a proviso to section 14A has been inserted so as to clarify that the Assessing Officer shall not reassess the cases under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.*
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> *"23.3 This amendment takes effect retrospectively from 11th May, 2001, that is the date on which the Finance Bill, 2001, received the assent of the President of India."*

After hearing the learned counsel for the parties and after going through the aforesaid materials on record, we find that at the time of passing the order of assessment on March 1, 2001 by the Assessing officer, according to the law as it then stood by virtue of the decisions of the Supreme Court in the cases of CIT vs.

Maharashtra Sugar Mills Ltd. reported in (1971) 82 ITR 452 and Rajasthan State Warehousing Corporation vs. CIT reported in (2000) 242 ITR 450, where there is one indivisible business giving rise to taxable income as well as exempt income, the entire expenditure in relation to that business would have to be allowed even if a part of the income earned from the business is exempt from tax and thus, the Assessing officer erroneously disallowed a part of the expenditure by acting contrary to those decisions. Section 14A was, however, enacted to overcome those judicial pronouncements with retrospective effect from April 1, 1962 subject to the restrictions indicated in the proviso thereto.

In the case before us, the original proceedings being taken in appeal before the Tribunal and the Section 14A having been given retrospective operation in case of pending assessment proceedings, the same would be applicable to the appeal before the Tribunal and also in this appeal before us and thus, the Tribunal below did not commit any illegality in applying the said provisions to the pending proceedings.

Thus, the approach of the Assessing officer to work out the pro-rata interest expenditure as relatable to earning of dividend was quite in conformity with the provisions of Section 14A of the Act and we do not find any reason to disturb the said order in the light of the amended provisions of Section 14A of the Act.

We, therefore, find no substance in the aforesaid contention of Mr. Khaitan that the Revenue cannot get the benefit of Section 14A of the Act and consequently, dismiss this appeal by answering the formulated question in the negative and against the assessee.

In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

I agree.

(Sambuddha Chakrabarti, J.)