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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No.1759 of 2010

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Decision Delivered On: 15th November, 2010.

COMMISSIONER OF INCOME TAX . . . Appellant

through : Ms. Sonia Mathur, Advocate,

VERSUS

PNB FINANCE & INDUSTRIES LTD. . . . Respondent

through: Ms. Akansha Aggarwal, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The assessee herein had filed the return of income for the assessment year 2001-02 declaring total income at ₹40,41,670. In this return, the assessee had claimed dividend income of ₹,13,08,602 as exempt. The return was processed under Section 143(1) of the Income Tax Act (hereinafter referred to as 'the Act') and accepted as filed vide orders dated 14.02.2003. The Assessing Officer (AO), after few years, i.e., vide notice dated 27.03.2008 reopened the assessment under Section 147/148 of the Act inasmuch as he was of the view that on the aforesaid dividend, income for which exemption was claimed by the assessee, proportionate expenses should have been disallowed

under Section 14A of the Act. In the reassessment proceedings, the AO, thus, disallowed the expenses to the extent of ₹27.36 lacs.

2. The CIT (A) has quashed the reassessment proceedings as invalid, *inter alia*, holding that proviso to Section 14A specifically bars any such reassessment under Section 147 prior to the Assessment Year 2002-03.
3. The aforesaid view of CIT (A) is upheld by the Income Tax Appellate Tribunal (in short 'the Tribunal').
4. Proviso to Section 14A reads as under:

“Provided that nothing contained in this Section shall empower the A.O. 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 April, 2001.”
5. A bare perusal of the aforesaid provision clearly brings out the bar created by the said provision for reopening the assessment under Section 147 of the Act for any assessment year beginning on or before 01.04.2001.
6. While learned counsel for the Revenue could not dispute the aforesaid legal position contained in Section 14A of the Act, she argues that since the original assessment in the instant case was done under Section 143(1) of the Act, it would not be treated as assessment having regard to the law laid down in the case of ***Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [(2007)291 ITR 500 (SC)]***. Therefore,

the second assessment made, could not be treated as reassessment and when the matter is viewed from this angle, proviso to Section 14A would not be applicable.

7. We are not in a position to agree with the aforesaid submission. In the first instance, we may point out that the observations of the Supreme Court in the case of **Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra)** discussing the nature of assessment made under Section 143(1)(a) were in altogether another context. The Court was discussing the scope of the expression “reason to believe” under Section 147 and the validity of the notice under Section 147 of the Act was being examined, viz., as to whether it would amount to change of opinion. In that scenario, the Supreme Court observed that since no mental exercise was done by the Assessing Officer in the original assessment proceedings, as the assessment was under Section 143 (1)(a) of the Act, question of change of opinion would not arise. Our observations would be same qua another judgment of this Court referred to by the learned counsel for the Revenue in the case of **MTNL Vs. The Chairman, Central Board of Direct Taxes & Anr. [(2000) 246 ITR 173 (Delhi)]** as in that case also the Court was considering as to whether the ingredients of Section 147 of the Act were fulfilled, where the validity of reassessment proceedings was in question.
8. Second and more important reason is that in the present case, the proviso has been added to Section 14A by the Legislature

categorically providing that the Assessing Officer is not empowered to do reassessment under Section 147 for assessment period beginning on or before 01.04.2001. In these circumstances, the Court has to only examine as to whether the conditions stipulated in the proviso are fulfilled or not. When the matter is examined from this angle, it is clear that the conditions contained in proviso to Section 14A of the Act are satisfied, inasmuch as:

- (a) The reassessment proceedings were initiated pursuant to notice issued under Section 147;
- (b) The notice was based entirely on Section 14A of the Act. The AO wanted expenditure purportedly incurred in relation to income earned from the dividend to be disallowed; and
- (c) The notice also related to the assessment year beginning on or before 01.04.2001.

9. In view of the above mandate of the Legislature, it was clearly not permissible for the AO to issue such a notice. We, thus, do not find any infirmity of the order of the Tribunal. This appeal is accordingly dismissed.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

NOVEMBER 15, 2010
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