

TAXAP/868/2010 3/3 ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 868 of 2010

=====

COMMISSIONER OF INCOME TAX - II - Appellant(s)

Versus

M/S LUBI SUBMERSIBLES LTD. - Opponent(s)

=====

Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,

None for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

25th July 2011

ORAL ORDER (Per : HONOURABLE MS JUSTICE SONIA GOKANI)

The present Tax Appeal pertains to disallowances made by the Assessing Officer in case of the assessee – respondent for the A.Y 2001-2002. The assessee, which made total investment in shares amounting Rs. 1,20,25,800/= had shown dividend income of Rs. 20,000/= on 500 Equity Shares of Bank of Baroda. On the borrowed capital,

finance charges were worked out to be Rs 38,90,721/=. The interest payment to the extent of investment made in shares were disallowed by the Assessing Officer on the ground that this was for the purpose of earning exempt income.

When challenged before the CIT [A] by the assessee-respondent, it held in favour of the assessee by holding that it had sufficient interest-free funds for investment.

When the same was further challenged before the Tribunal by the Revenue, it concurred with the findings of the CIT [A]. The impugned Order dated 9th October 2009 is in challenge before this Court, raising the following question for our consideration :

“Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by CIT (A) in deleting the disallowance of Rs. 13,82,778/= made under Section 14A of the Act ?”

On hearing learned counsel for the Revenue and on perusal of the record, this Tax Appeal deserves to be decided by upholding the version of the Tribunal, for the reasons to be recorded hereinafter.

As can be seen from the treatment accorded to the said issue by the Tribunal, the Tribunal decided on the basis of provisions contained in Section 14A of the Income-Tax Act, 1961 {“**Act**” for short} which states that no deduction could be allowed in respect of expenditure incurred in relation to income which does not form part of the total income under the said Act. It concluded that the funds of the assessee-respondent

were mix funds in as much as investment was made in the preceding years and there was no fresh investment during the year under consideration. It also did not agree with the findings of the Assessing Officer that the investment was made by the assessee out of borrowed funds. Thus, from the entire gamut of facts, the Tribunal held that there was sufficient surplus funds available with the assessee to invest and there was no *nexus* that could be established with the expenditure incurred by the assessee for earning the dividend income. By discussing at length the similar view taken by the cognate Bench in the case of **A.C.U.I.T vs. Jupiter Corporate Services Limited**, it concluded that in absence of any material, it was evident that no expenditure had been incurred by way of interest which could be related to dividend income, nor was brought any material to suggest that the borrowed funds were utilized for investment in shares. While there was no disallowance of interest paid on borrowed funds was made in the preceding Assessment Year, there was no material available before the Tribunal to take a different view than already taken in the earlier Assessment Year. Logic given for conclusion requires no interference. It was on the basis of evidence which was presented before the Tribunal that the conclusion had been arrived at with regard to availability of the free-funds for investment, and therefore, this Appeal merits no consideration. Accordingly, the present Tax Appeal is dismissed with no order as to costs.

{Akil Kureshi, J.}

{Ms. Sonia Gokani, J.}

Prakash*