IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1753 OF 2016

HDFC Bank Ltd. Mumbai .. Petitioner

v/s.

The Deputy Commissioner of Income Tax-2(3), Mumbai & Ors. .. Respondents

Mr. J.D. Mistry, Senior Counsel a/w Madhur Agarwal a/w Atul Jasani for the petitioner
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the respondent

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.

DATED : 25th FEBRUARY, 2016.

PER COURT :-

1. Heard. Rule. Respondents wave service. By consent of the parties, Rule is made returnable forthwith.

2. This petition under Articles 226 and 227 of the Constitution of India challenges the order dated 23rd September, 2015 passed by the Income Tax Appellate Tribunal (Tribunal) under Section 254(1) of the Income Tax Act, 1961 (the Act). By the impugned

order dated 23rd September, 2015, the Tribunal dismissed the petitioner's appeal relating to the Assessment Year 2008-09 on the issue of applicability of Section 14A of the Act to disallow a portion of the interest paid on borrowed funds in respect of investments made in tax free securities. This when it has own funds in excess of investments made in the securities and further these securities are held as stock in trade. This dismissal of the appeal, submit the petitioner, inspite of the issue being concluded on both the grounds in its favour by the binding decisions of this Court.

3. However, Mr. Suresh Kumar the learned Counsel for the Revenue urged that as there is an alternative remedy of an statutory appeal available under Section 260A of the Act from impugned order of the Tribunal this court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. It is submitted that issue raised in this petition could be examined in appeal. It is true that an order passed under Section 254(1) of the Act by the Tribunal, such as the impugned order is amenable to an appeal to this Court under Section 260A of the

Act. Normally we would have directed the petitioner to adopt its statutory alternative remedy. However, the grievance of the petitioner here is not so much to the merits or demerits of the impugned order, but the refusal of the Tribunal to follow the binding decision of this Court in the case of the petitioner itself being ***CIT Vs. HDFC Bank Ltd. 366 ITR 505*** for an earlier Assessment Year 2001-02 on identical issue of applicability of Section 14A of the Act to partially disallow interest expenditure when interest free funds available with the Petitioner are in excess of investments made in tax free securities. Thus, the endeavor of the petitioner is to bring to our notice that in passing the impugned order dated 23 September 2015 the Tribunal has exceeded the bounds of its authority, by disregarding the binding decisions of this Court, which if not corrected, may sound the death knell of two established practices of our judicial system viz. doctrine of Precedent i.e. treating like cases alike and the hierarchical structure of our judicial system/jurisprudence where each lower forum / tier is bound by the orders of the higher tier on like issues till such time as it is set aside by a further higher forum. It is in the aforesaid circumstances, that we are compelled

to examine the grievance of the petitioner in the context of our supervisory jurisdiction under Article 227 of the Constitution of India.

4. Factual Matrix :-

(a) For the Assessment Year 2008-09, the petitioner filed its return of income declaring an income of Rs.241.72crores. The petitioner had in its return of income also declared an income of Rs.5.81crores from the investments in securities which were exempt from tax. These investments were treated by the petitioner as stock in trade. The petitioner had during the subject Assessment year paid interest on borrowed funds and had claimed the same as an expenditure. However the petitioner did not disallow any expenditure on the income earned on the tax free securities on the ground that the investments in tax free securities was made out of its own tax free funds as is evidenced by the fact that it had ample funds of its own to make investments. Thus no disallowance was made on the expenditure claimed as the interest paid on borrowed funds.

(b) By an order dated 22nd December, 2010 passed under

Section 143(3) of the Act, the Assessing Officer assessed the petitioner's income at Rs.1067.93crores. This after disregarding the petitioner's contention that Section 14A of the Act would not apply in respect of its tax free securities as it had ample interest free funds available and the same was utilized from a common pool consisting of interest bearing funds and interest free funds to purchase the tax free securities. This only on the ground that the petitioner was not able to indicate / lead evidence that the investments made in tax free securities came out of its interest free funds. In the circumstances the Assessing officer invoked Section 14A of the Act r/w Rule 8D of the Income Tax Rules (Rules) to disallow an amount of Rs. 3.39crores on account of interest and Rs.0.27crore as other expenses aggregating to Rs.3.66crores under Section 14A of the Act as being an expenditure incurred for earning tax exempt income of Rs.5.81crores.

(c) Being aggrieved with the order dated 22nd December, 2010 of the Assessing Officer, the petitioner preferred an Appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 21st November, 2011, the CIT(A) dismissed the petitioner's appeal upholding the order of the Assessing Officer.

(d) Being aggrieved, the petitioner *inter alia* carried the issue of disallowance of interest to the extent of Rs.3.39crores under Section 14A r/w Rule 8D of the Rules in appeal to the Tribunal. Before the Tribunal, the petitioner raised two grounds with regard to the above issue as under:-

(i) It possessed interest free funds which were more than the tax free investments. Thus no disallowance of expenditure on account of interest paid could be made in view of the binding decision of this Court in the petitioner's own case in *HDFC Bank Ltd. (supra);* and

(ii) The tax free securities were held by it as its stock in trade. Thus no disallowance of any expenditure under Section 14A of the Act could be made in view of binding decision of this Court in ***CIT Vs. India Advantages Securities Ltd. ITA 1131/13*** decided on 30th April, 2014.

However, the Tribunal by the impugned order did not accept the petitioner's submission on both the grounds. It disregarded the binding decision of this Court by holding that an earlier decision of this Court in ***Godrej and Boyce Manufacturing***

Co. Ltd. Vs. Deputy Commissioner of Income Tax, 328 ITR 81, which was not brought to the notice of this Court in HDFC Bank Ltd.(supra) would hold the field. Further on the second issue of stock in trade the impugned order after holding that it was raised for the first time before the Tribunal, yet on merits holds that the decision of this Court in India Advantage Securities Ltd. (supra) cannot apply. This for the reason that this Court in India Advantage Securities Ltd. (supra) dismissed the Revenue's appeal at the stage of admission on the ground that no question of law arises for consideration from the order of the Tribunal.

Submissions :-

5. Mr. Mistry, learned Senior Counsel in support of the petition submits as under :-

(a) The issue which arose for consideration before the Tribunal with regard to applicability of Section 14A of the Act in respect of the tax free income earned on investments in case of a party possessed of interest free funds in excess of the investments made in tax free securities stood concluded in favour of the petitioner by the binding decision of this Court as rendered in the petitioner's

own case viz. HDFC Bank Ltd (supra) on identical facts. Nevertheless the binding decision is disregarded by seeking to hold that the issue is covered by an earlier decision of this Court in Godrej and Boyce Manufacturing Co. Ltd(supra), when in fact it has not decided the issue;

(b) There is no conflict between the decisions of this Court in Godrej and Boyce Manufacturing Co. Ltd.(supra) and HDFC Bank Ltd(supra). This is for the reason that this Court has in Godrej and Boyce Manufacturing Co. Ltd.(supra) has not ruled on the issue of disallowance of interest under Section 14A of the Act on the ground of presumption where sufficient interest free funds are available to make investment in tax free instruments. This issue was only decided later by this Court for the first time in the petitioner's own case in HDFC Bank Ltd.(supra).

(c) In view of the fact that there is only one decision viz. HDFC Bank Ltd(supra) of this court reigning, it was not open to the Tribunal to disregard a decision of this court by merely holding the decision in *HDFC Bank Ltd. (supra)* was per incuriam. This on the ground that in HDFC Bank Ltd. (supra) attention was not invited to the decision of this Court in Godrej and Boyce

Manufacturing Co. Ltd.(supra). This is more particularly so when Godrej and Boyce Manufacturing Co. Ltd. (supra) has no application to the present facts;

(d) In fact the Tribunal has been consistently following the ratio of the decision of this Court in HDFC Bank (supra) in other cases before it, but HDFC Bank itself i.e. the petitioner does not get its benefit.

(e) Similarly, the alternative submissions urged before the Tribunal that these investments in securities are its stock in trade and consequently Section 14A of the Act is not applicable is also concluded in favour of the petitioner as held by this Court in India Advantages Securities Ltd. (supra). However the impugned order ignores the same on the ground that this Court in the above case only dismissed the Revenue's appeal before it and therefore not binding. Further the impugned order also places reliance upon the decision of this Court in Godrej and Boyce Manufacturing Co. Ltd.(supra) even when it has no application to the facts before it.

6. Per contra Mr. Suresh Kumar, learned Counsel for the Revenue in support of the impugned order submits as under :-

(a) This petition should not be entertained as there is an alternative remedy available to the petitioner under Section 260A of the Act by way of an appeal to this Court from the impugned order of the Tribunal.

(b) The appeal filed by the petitioner before the Tribunal arose from orders of the Assessing Officer and the CIT(A) holding that the petitioner was unable to establish that its interest free funds were utilized for the purposes of investment in securities. Consequently, it is submitted that the decision of this Court in *HDFC Bank Ltd. (supra)* would not have any application to the facts of the present case.

(c) In the facts of the present case the decision of this Court in Godrej and Boyce Manufacturing Ltd. (supra) was applicable and not the decision rendered by this Court in *HDFC Bank Ltd. (supra)*. In support reliance is placed upon the impugned order of the Tribunal.

(d) The alternative contention that the investment in securities are petitioner's in stock in trade, was raised for the first time only before the Tribunal and thus could not be entertained. In any case the decision of this Court in India Advantage Securities Ltd

(supra) would have no application as the revenue's appeal was dismissed by this court at the stage of admission.

It is, therefore, submitted that the impugned order passed by the Tribunal calls for no interference by this Court in its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

Consideration :-

7. In our system of Jurisprudence the theory of Precedents and the hierarchical structure are an inherent part of our dispute resolution/justice obtaining apparatus i.e. Courts / Tribunal. The theory of precedent ensures that what has been done earlier would be done subsequently on identical facts. To wit, like cases are to be treated alike. Thus, the doctrine of precedent ensures certainty of law, uniformity of law and fairness meeting some of the essentials ingredients of Rule of Law. In fact, the Supreme Court in **Union of India vs. Raghuvir Singh 1989 (2) SCC 754** while setting out the objectives of the doctrine of Precedent observes at para 7, 8 and 9 thereof as under:-

"*7. India is governed by a judicial system identified by a hierarchy of courts, where the doctrine of binding precedent is a cardinal feature of its jurisprudence. …….*

8. *Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and re- solve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.*

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court."

(emphasis supplied)

8. Further the Apex Court in the case of ***Collector of Central Excise Vs. Dunlop India Ltd. 154 ITR 172*** has observed as under :-

"We desire to add and as was said in Cassell and Co. Ltd. V. Broome (1972) AC 1027 (HL), we hope it will never be necessary for us to say so again that "in the hierarchical system of courts" which exists in our country, "it is

necessary for each lower tier", including the High Court, "to accept loyally the decisions of higher tiers." It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary ……. But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted" (See observations of Lord Hailsham and Lord Diplock in Broome V. Cassell). The better wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system. In Cassell V. Broome (1972) AC 1027, commenting on the Court of Appeal's comment that Rookes V. Barnard (1964) AC 1129, was rendered per incuriam, Lord Diplock observed (p.1131).

"The Court of Appeal found themselves able to disregard the decision of this House in Rookes V. Barnard by applying to it the label per incuriam. That label is relevant only to the right of an appellate court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a judge of the High Court to disregard a decision of the Court of Appeal."

It is needles to add that in India under article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all Courts within the territory of India and

under art. 144 all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."

(emphasis supplied)

9. Although both the above decisions are rendered in the context of the decision of the Supreme Court, the same principle with equal force would apply to the decisions of the High Court within the State over which it exercises jurisdiction. This issue is long settled by the Apex Court in ***East India Commercial Co. Ltd. Calcutta and Anr. vs. Collector of Customs, Calcutta 1962 SC SC 1893*** wherein it has been held as under:-

"29. ..... This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art.215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227, it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do

so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

(emphasis supplied)

Thus, the law declared by the decisions of the High Court will be binding upon all authorities and Tribunals functioning within the State. Consequently, the decisions of this Court would be binding upon all Authorities, Tribunals and Courts subordinate to the High Court within the State of Maharashtra.

10. One more aspect which needs to be adverted to and that is that a decision would be considered to be a binding precedent only if it deals with/decides an issue which is subject matter of

consideration/decision before a coordinate or subordinate court. It is axiomatic that a decision cannot be relied upon in support of the proposition that it did not decide.(see **Mittal Engineering v. Coll,of Central Excise 1997 (1)SCC 203**).Therefore it is only the ratio decidendi i.e. the principle of law that decides the dispute which can be relied upon as precedent and not any obiter dictum or casual observations. (See **Girnar Tea vs. State of Maharashtra 2007(7) SCC 555** and **Shin Estu Chemical Co. Ltd v. Aksh opticfibre Ltd 2005 (7) SCC 234**).

11. Keeping the aforesaid position of law in mind, we shall now examine the impugned order of the Tribunal. The issue before the Tribunal as raised by the petitioner was that Section 14A of the Act would have no application to disallow interest expenditure on fund borrowed in respect of the tax free returns on the securities, for the following two reasons :-

(a) The petitioner was possessed of sufficient interest free funds of Rs.2153 crores as against the investment in tax free securities of Rs.52.02 crores. Consequently, there is a presumption that the investment which has been made in the tax free securities has

come out of the interest free funds available with the petitioner. This is so as it has been held by this Court in the petitioner's own case for an earlier Assessment year being *HDFC Bank Ltd.(supra)*. This decision on the above issue has been accepted by the Revenue. This is evidenced by the fact although an appeal has been filed to the Supreme Court with regard to another issue arising from the order in *HDFC Bank Ltd. (supra)* namely broken period interest, no appeal on this issue as raised before the Tribunal has been challenged before the Supreme Court; and

(b) In any event, the tax free investment in securities were the petitioner's stock in trade. Consequently, there would be no occasion to invoke Section 14A of the Act as held by this Court in India Advantage Securities Ltd. (supra) wherein the Revenue's appeal from the order of the Tribunal was dismissed, to contend that no disallowance can be made under Section 14A of the Act in respect of exempted Income arising from stock in trade.

12. The impugned order of the Tribunal in so far as contention (a) above is concerned, chose to disregard the binding decision of this court in petitioner's own case being HDFC Bank Ltd.(supra).

The impugned order of the Tribunal after recording that it is conscious that the decision of this Court are binding upon it proceeds on the basis that it had to decide which of the two decisions rendered in *Godrej and Boyce (supra)* and *HDFC Bank Ltd. (supra)* is to be followed. Thereby implying and proceeding on the basis that there is a conflict between the two decisions rendered by this Court in Godrej and Boyce Manufacturing Co. Ltd. (supra) and *HDFC Bank Ltd. (supra)*. We are unable to understand on what basis the impugned order has proceeded on the basis that there is a conflict between the two decisions. This is so as with the assistance of the Counsel we closely examined the decision of this court in *Godrej and Boyce Manufacturing Co. Ltd. (supra).* On examination we find that the issue arising in this case before the Tribunal viz. where interest free funds are available with an Assessee which are more than the investments made in the tax free securities, then a presumption arises that the investments were made from its interest free funds, was not decided therein. In fact, no view even as an obiter dictum on the issue was expressed by this court in the above case. This issue

along with other issues were restored by this Court in Godrej and Boyce Manufacturing Co. Ltd. (supra) to the Assessing officer for passing an order afresh, after the Court upheld the Constitutionality of Section 14A of the Act.

13. One more fact which must be emphasized is that merely because a decision has been cited before the Court and a reference to that has been made in the order of the Court such as in the case of Godrej and Boyce Manufacturing Co. Ltd. (supra) reference was made to ***CIT Vs. Reliance Utilities and Power Ltd. 313 ITR 340*** by itself would not lead to the conclusion that Reliance Utilities and Power Ltd. (supra) has been considered and the opinion on the same has been rendered in the case of Godrej and Boyce Manufacturing Co. Ltd.(supra). The test to decide whether or not two decisions are in conflict with each other is to first determine the ratio of both the cases and if the ratio in both the cases are in conflict with each other, then alone, can it be said that the two decisions are in conflict. We find that no such exercise has been done. If it was done, the Tribunal would have noted that this Court in Godrej and Boyce Manufacturing Co. Ltd. (supra) has not

decided the issue of applicability of Reliance Utilities and Power Ltd. (supra) inasmuch as it has restored the entire issue to the Assessing officer after upholding the constitutional validity of Section 14A of the Act.

14. The only basis for proceeding on the basis that there is a conflict between the two decisions of this court which emerges from the impugned order is that in petitioner's own case in *HDFC Bank Ltd. (supra)*, reliance was placed upon the decision of this Court in Reliance Utilities and Power Ltd. (supra) to conclude that where both interest free funds and interest bearing funds are available and the interest free funds are more than the investments made, the presumption is that the investment in the tax free securities would have been made out of the interest free funds available with the assessee. Though, the decision of this Court in Reliance Utilities and Power Ltd. (supra) was rendered in the context of Section 36(1)(iii) of the Act, it was consciously applied by this Court while interpreting Section 14A of the Act in HDFC Bank Ltd. (supra). The impugned order of the Tribunal proceeds on the basis that Godrej and Boyce Manufacturing Co.

Ltd. (supra) had considered the decision of this Court in Reliance Utilities and Power Ltd. (supra), which is factually not so. The decision of this Court in Godrej and Boyce Manufacturing Co. Ltd. (supra) only makes a reference to the decision of this Court in Reliance Utilities and Power Ltd. (supra) and gives no findings on the issue which arose in that case and its applicability while interpreting Section 14A of the Act. This Court in Godrej and Boyce Manufacturing Co. Ltd. (supra) has in fact restored all the issues to the Assessing Officer for fresh consideration. This court in Godrej and Boyce Manufacturing Co. Ltd. (supra) did not decide whether or not the principles laid down in Reliance Utilities and Power Ltd. (supra) can be invoked while applying Section 14A of the Act. Thus by no stretch of reasoning can it be countenanced that there is conflict in the decisions of this Court in Godrej and Boyce Manufacturing Co. Ltd.(supra) and HDFC Bank Ltd.(supra). The decision in Godrej and Boyce Manufacturing Co. Ltd.(supra) is not a precedent for the issue arising before the Tribunal and could not be relied upon in the impugned order of the Tribunal to disregard the binding decision in HDFC Bank Ltd. (supra).

15. It is clear that for the first time in the case of *HDFC Bank Ltd. (supra)* that this Court took a view that the presumption which has been laid down in Reliance Utilities and Power Ltd. (supra) with regard to investment in tax free securities coming out of assessee's own funds in case the same are in excess of the investments made in the securities (notwithstanding the fact that the assessee concerned may also have taken some funds on interest) applies, when applying Section 14A of the Act. Thus, the decision of this Court in *HDFC Bank Ltd. (supra)* for the first time on 23rd July, 2014 has settled the issue by holding that the test of presumption as held by this Court in Reliance Utilities and Power Ltd. (supra) while considering Section 36(1)(iii) of the Act would apply while considering the application of Section 14A of the Act. The aforesaid decision of this Court in *HDFC Bank Ltd. (supra)* on the above issue has also been accepted by the Revenue inasmuch as even though they have filed an appeal to the Supreme Court against that order on the other issue therein viz. broken period interest, no appeal has been preferred by the Revenue on the issue

of invoking the principles laid down in Reliance Utilities and Power Ltd. (supra) in its application to Section 14A of the Act. Therefore, the issue which arose for consideration before the Tribunal had not been decided by this Court in Godrej and Boyce Manufacturing Co. Ltd.(supra). It arose and was so decided for the first time by this Court in *HDFC Bank Ltd. (supra)*. Thus, there is no conflict as sought to be made out by the impugned order. Thus, the impugned order has proceeded on a fundamentally erroneous basis as the ratio decindi of the order in Godrej and Boyce Manufacturing Co. Ltd.(supra) had nothing to do with the test of presumption canvassed by the petitioner before the Tribunal on the basis of the ratio of the decision of this Court in HDFC Bank Ltd.(supra).

16. At the hearing Mr. Suresh Kumar, learned Counsel for the Revenue urged that on the facts of this case no fault can be found with the order of the Tribunal. It is submitted that, the petitioner was not able to establish before the Assessing Officer and the CIT(A) that the amounts invested in the interest free securities came out of interest free funds available with the petitioner. In

that view of the matter, it is submitted by him that the order of this Court in *HDFC Bank Ltd. (supra)* would not apply to the facts of the present case. We are unable to understand the above submission. The Assessing Officer passed the Assessment order on 22nd December, 2010 under Section 143(3) of the Act. The CIT (A) passed an order on 21st November, 2011 dismissing the petitioner's appeal. On both the dates, when the orders were passed by the Assessing Officer and CIT (A), the authorities did not have the benefit of the order of this Court in *HDFC Bank Ltd. (supra)* rendered on 23rd July, 2014. Once the issue is settled by the decision of this Court in *HDFC Bank Ltd. (supra)*, there is now no need for the assessee to establish with evidence that the amounts which has been invested in the tax free securities have come out of interest free funds available with it. This is because once the assessee is possessed of interest free funds sufficient to make the investment in tax free securities, it is presumed that it has been paid for out of the interest free funds. Consequently, we do not find any merit in the above submission made at the hearing on behalf of the Revenue.

17. At the hearing before us the Petitioner drew our attention to various orders of the Tribunal where a consistent view has been taken by the coordinate benches of the Tribunal in applying the presumption laid down by this Court in Reliance Utilities and Ltd. (supra) as well as the decision of this Court in *HDFC Bank Ltd. (supra)* while deciding on application of Section 14A of the Act to disallow interest claimed as expenditure. Besides reliance is also placed upon a decision of this Court in the case of the petitioner itself before this Court in Income Tax Appeal No.860 of 2012 rendered on 24th September, 2014 wherein question (b) as formulated by the Revenue raised the same issue namely applicability of the Godrej and Boyce Manufacturing Co. Ltd. (supra) while interpreting Section 14A of the Act in the context of the test of presumption as arising in the appeal before the Tribunal. For the purposes of this order, we are not taking into account the above decisions as they were not cited at the hearing before the Tribunal. Thus we are only examining whether the action of the Tribunal is within the bounds of its authority on the basis of the materials placed before it leading to the impugned

order and we unfortunately find it is not so. This is for the reason that it failed to follow the binding precedent in HDFC Bank Ltd. (supra).

18. The alternative submission (b) which was put forth by the petitioner before the Tribunal that the investment in securities are its stock in trade. Consequently, Section 14A of the Act would be inapplicable by placing reliance upon the decision of this Court in India Advantage Securities Ltd. (supra). However this was also disregarded by the impugned order on the ground that this Court did not entertain an appeal of the Revenue from the order of the Tribunal holding that Section 14A of the Act is inapplicable where the investment has been made in stock in trade. This non entertainment of an appeal being on the ground that this Court found no substantial question of law. Therefore, the impugned order holds that the decision relied upon in India Advantage Securities Ltd. (supra) does not lay down any binding proposition of law.

19. We are unable to comprehend how and why the impugned

order of the Tribunal is of the view that if an appeal is not admitted from an order of the Tribunal, then it is open to the Tribunal in another case to decide directly contrary to the view taken by the earlier order of the Tribunal, which is not entertained by this court in appeal. This without even as much as a whisper of any explanation with regard to how and why the facts of the two cases are different warranting a view different from that taken by the Tribunal earlier. In fact when an appeal is not entertained then the order of the Tribunal holds the field and the coordinate benches of the Tribunal are obliged to follow the same unless there is some difference in the facts or law applicable and the difference in fact and / or law should be reflected in its order taking a different view. Moreover the impugned order of the Tribunal places reliance upon the decision of this Court in Godrej and Boyce Manufacturing Co. Ltd.(supra) to deny the claim. On this issue no decision was rendered by this court in Godrej and Boyce Manufacturing Co. Ltd.(supra) and therefore how could it be relied upon to deny the claim of the petitioner is beyond comprehension. This again shows that the Tribunal has acted beyond the limits of its authority.

20. Mr. Suresh Kumar on behalf of the Revenue states that this ground was raised for the first time before the Tribunal and not urged before the lower authorities and therefore no fault can be found with the order of the Tribunal. Once Tribunal has considered the issue on merits and dealt with it in detail, it is not open to the Revenue to urge an objection when the Tribunal has itself decided the issue on merits.

21. The impugned order of the Tribunal seems to question the decision of this Court in *HDFC Bank Ltd. (supra)* to the extent it relied upon the decision of this Court in Reliance Utilities and Power Ltd. (supra). This is by observing that the decision in Reliance Utilities and Power Ltd.(supra) it must be appreciated was rendered in the context of Section 36(1)(iii) of the Act and its parameters are different from that of Section 14A of the Act. This Court in its order in *HDFC Bank Ltd.(supra)* consciously applied the principle of presumption as laid down in Reliance Utilities and Power Ltd. (supra) and in fact quoted the relevant paragraph to emphasize that the same principle / test of presumption would

apply to decide whether or not interest expenditure could be disallowed under Section 14A of the Act in respect of the income arising out of tax free securities. It is not the office of Tribunal to disregard a binding decision of this court. This is particularly so when the decision in Reliance Utilities and Power Ltd. (supra) has been consciously applied by this Court while rendering a decision in the context of Section 14A of the Act.

22. We also note that the impugned order of the Tribunal has an observation therein that there is no such thing as estoppel in law and by virtue of that gives itself a licence to decide the issue before it ignoring the binding precedent in the petitioner's own case in HDFC Bank Ltd(supra). Once there is a binding decision of this Court, the same continues to be binding on all authorities within the State till such time as it stayed and / or set aside by the Apex Court or this very Court takes a different view on an identical factual matrix or larger bench of this Court takes a view different from the one already taken.

23. We are conscious of the fact that we are fallible and,

therefore, an order passed by us may not meet the approval of all and some may justifiably consider our order to be incorrect. However the same has to be corrected/rectified in a manner known to law and not by disregarding binding decisions of this Court. In fact our court in ***Panjumal Hassomal Advani Vs. Harpal Singh Abnashi Singh Sawhney & Ors. AIR 1975(Bom) 120*** has observed that a coordinate bench cannot refuse to follow an earlier decision on the ground that it is incorrect and / or rendered on misinterpretation. This for the reason that the decision of a co-ordinate bench would continue to be binding till it is corrected by a higher Court. This principle laid down in respect of a co-ordinate Court would apply with greater force on subordinate Courts and Tribunals. We are also conscious of the fact that we are not final and our orders are subject to appeals to the Supreme Court. However, for the purposes of certainty, fairness and uniformity of law, all authorities within the State are bound to follow the orders passed by us in all like matters, which by itself implies that if there are some distinguishing features in the matter before the Tribunal and, therefore, unlike, then the Tribunal is free to decide on the basis of the facts put before it.

However till such time as the decision of this court stands it is not open to the Tribunal or any other Authority in the State of Maharashtra to disregard it while considering a like issue. In case we are wrong, the aggrieved party can certainly take it up to the Supreme Court and have it set aside and / or corrected or where the same issue arises in a subsequent case the issue may be re-urged before the Court to impress upon it that the decision rendered earlier, requires reconsideration. It is not open to the Tribunal to sit in appeal from the orders of this Court and not follow it. In case the doctrine of precedent is not strictly followed there would complete confusion and uncertainty. The victim of such arbitrary action would be the Rule of law of which we as the Indian State are so justifiably proud.

24. It is in the above circumstances that we are of the view that we have to exercise our powers under Article 227 of the Constitution of India. This is in view of the manner in which the impugned order of the Tribunal has chosen to disregard and/or circumvent the binding decision of this Court in respect of the same assessee for an earlier assessment year. This is a clear case

of judicial indiscipline and creating confusion in respect of issues which stand settled by the decision of this Court.

25. It is in the above view, that we set aside the impugned order of the Tribunal dated 23rd September, 2015 in its entirety and restore the issue to the Tribunal to decide it afresh on its own merits and in accordance with law. However the Tribunal would scrupulously follow the decisions rendered by this Court wherein a view a has been taken on identical issues arising before it. It is not open to the Tribunal to disregard the binding decisions of this Court, the grounds indicated in the impugned order which are not at all sustainable. Unless the Tribunal follows this discipline, it would result in uncertainty of the law and confusion among the tax paying public as to what are their obligations under the Act. Besides opening the gates for arbitrary action in the administration of law, as each authority would then decide disregarding the binding precedents leading to complete chaos and anarchy in the administration of law.

26. Accordingly, the Rule is made absolute in above terms. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**