



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

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**INCOME TAX APPEAL NO.661 OF 2018**

Pr. Commissioner of Income Tax-2  
Aaykar Bhavan, Mumbai – 400 020.

...Appellant

**Versus**

TATA Industries Ltd  
Bombay House, 24 Homi Mody Street  
Fort, Mumbai – 400 001.

...Respondent

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Mr. N. C. Mohanty for Appellant.

Ms. Arti Vissanji a/w Mr. Shrihari Iyer for Respondent.

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CORAM : M. S. Sonak &  
Jitendra Jain, JJ.

DATED : 8 January 2025

**P.C. (Per Jitendra Jain J.):-**

1. This appeal is filed under Section 260A of the Income Tax Act, 1961 (“the said Act”) for assessment year 2004-05 by the appellant-revenue, to challenge an order of the Income Tax Appellate Tribunal (“Tribunal”) dated 20 July 2016, on various questions of law but only following substantial questions of law were pressed before this Court :-

**SUBSTANTIAL QUESTION OF LAW**

“(1) On the facts and in the circumstances of the case and in law, the Hon’ble ITAT erred in deleting the disallowance u/s 14A of gross interest expenditure of Rs. 75,20,81,001/- which is incurred towards earning tax free income ignoring the facts that such interest expenditure was on account fo investment in subsidiary companies/ controlled companies yielding tax free dividend for the purpose of computing income from Business or Profession and also for computing the Adjusted Book Profit u/s 115JB of the Act.

(7) On the facts and in the circumstances of the case and in law, the Hon’ble ITAT was right in limiting the disallowance u/s 14A to exempt income earned during the year wherein the assessee itself had suo moto

*apportioned and disallowed Rs.39 crores u/s 14A in the return of income filed wherein exempt income earned during the year was Rs.6.16 crores.*

*(8) On the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in deleting the disallowance of expenditure of Rs.22,14,030/- incurred as Debenture issue expenses for the purpose of computing income from business or profession considering it as revenue in nature which should have been spread over the period of debenture as per the decision of the Hon'ble Supreme Court decision given in the case of Madras Industrial Investment's case (1997) 225 ITR 802 (SC)."*

2. The other questions, though raised, have not been pressed before us.
3. We propose to first deal with Question no.7, which deals with the Tribunal's findings restricting the disallowance under Section 14A to the extent of exempt income of Rs.6.16 crores, although the respondent-assessee in the return of income disallowed Rs. 39 crores under Section 14A of the said Act with regard to interest expenditure. In the assessment order, the said disallowance was made to the tune of Rs.75.20 crore. The respondent-assessee before the Tribunal urged that disallowance made by them was not in accordance with law in the light of various decisions which have taken the view that disallowance cannot exceed the exempt income and based on the same, although they themselves have disallowed more than the exempted income, disallowance should be restricted to the extent of the exempted income of Rs.6.16 crores. The Tribunal accepted the said contention of the respondent-assessee which is now challenged in the present appeal.
4. The issue whether disallowance under Section 14A can exceed the exempt income is concluded by series of judgment of the Co-ordinate Benches of this Court namely:-

- (i) *Nirved Traders Private Limited Vs. Deputy Commissioner of Income Tax*<sup>1</sup>
- (ii) *Principal Commissioner of Income Tax, Panaji, Goa Vs. Ajit Ramakant Phatarpekar*<sup>2</sup>
- (iii) *Principal Commissioner of Income Tax-3 Vs. Reliance Ports and Terminals Ltd.*<sup>3</sup>
- (iv) *Principal Commissioner of Income Tax Vs. HSBC Invest Direct (India) Ltd.*<sup>4</sup>
- (v) *Principal Commissioner of Income Tax-7 Vs. Morgan Stanley India Securities P. Ltd*<sup>5</sup>

5. In view of the above, since issue is concluded by series of decisions of this Court, no substantial question of law can be said to arise on the said issue.

6. Insofar as question no.1 is concerned, same is inconsequential since it gets eclipsed while considering question no.7 raised in the appeal memo.

7. With respect to question no.8, it deals with whether the upfront fees and brokerage fees for issuing non-convertible debentures should be allowed fully in the assessment year 2004-05 or should be spread over two years for which non-convertible debentures were issued. There is no dispute between the parties that expenses have to be allowed as a deduction, but the only issue is whether it should be allowed fully in one year or it should be spread over a period of two years. The rate of tax for the assessment years 2004-05 and 2005-06 is same. This Court in the case of *CIT Vs. Nagri Mills Co. Ltd.*<sup>6</sup> has observed that if the tax

1 (2020) 421 ITR 142 (Bom)

2 (2021) 124 taxmann.com 124 (Bombay)

3 Income Tax Appeal No.1034 of 2017 dated 19 November 2019

4 (2020) 421 ITR 125 (Bom)

5 Income Tax Appeal No.1701 of 2017 dated 21 January 2020

6 (1958) 33 ITR 681 (Bom)

rate is uniform for two years then, the deduction whether claimed by the assessee in the year one or two is of no consequence to the revenue. This decision has been subsequently followed by various Courts and the last of the decision following the decision of *Nagri Mills Co. Ltd. (supra)* is in the case of *Principal Commissioner of Income Tax, Panaji Goa Vs. Rajesh Prakash Timblo*<sup>7</sup>. This view also finds support from the decision of the Supreme Court in the case of *CIT vs. Excel Industries*<sup>8</sup>. In our view, respectfully following the decision of the Supreme Court and the Co-ordinates Bench of this Court, no substantial question of law arises on this issue.

8. In any case, the decision of the Supreme Court in the case of *Madras Industrial Investment Corporation Ltd. Vs. Commissioner of Income Tax*<sup>9</sup> has been subsequently considered and explained by the Supreme Court in the case of *Taparia Tools Ltd. Vs. Joint Commissioner of Income Tax*<sup>10</sup> and the Hon'ble Supreme Court has held that the revenue expenditure is to be allowed in the year in which it is incurred but it could be spread over only at the instance of an assessee. In the present case, since there is no dispute that the expenditure incurred is revenue and the respondent-assessee has opted to claim it in assessment year 2004-05 itself, the appellant-revenue cannot compel the respondent-assessee to claim it over a period of two years. Therefore, even on this count, no substantial question of law arises.

9. In view of the above, no case is made out by the appellant-revenue for admission of the present appeal and, therefore, the same is dismissed with no order as to costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)

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7 (2019) 106 taxmann.com 255 (Bom)

8 (2013) 358 ITR 295

9 (1997) 225 ITR 802 (SC)

10 (2015) 372 ITR 605 (SC)