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

INCOME TAX APPEAL NO.2253 OF 2018

Pr. Commissioner of Income Tax-1 ...**Appellant**

Versus

ICICI Securities Primary Dealership Limited ...**Respondent**
(formerly known as "ICICI Securities Ltd.")

Mr. Suresh Kumar for the Appellant.

Mr. Madhur Agrawal i/b Mr. Atul K. Jasani for the Respondent.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

DATED : 18th SEPTEMBER, 2025.

ORDER :

1. In the above Income Tax Appeal, the questions of law raised is as under:

> *i. "Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in deleting the disallowance of Rs.8,91,05,703/- on account of interest expense u/s 36(1)(iii), without appreciating that the expenditure was not for the purpose of business?"*

ii. "Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in deleting the disallowance of Rs.8,91,05,703/- on account of interest expense u/s 36(1)(iii), without appreciating that the deduction could not be claimed for income chargeable to tax under the head Capital Gain?"

2. The Income Tax Appellate Tribunal (ITAT) has in the impugned order recorded the submission of the learned AR that an identical issue had been decided by the Hon'ble ITAT in the Assessee's own case in ITA No.884 & 928/M/2007 for AY 2002-03 and in ITA No.3108/M/07, ITA No.5336/M/08 for AY 2004-05 & 2005-06. The relevant portion of the order of the Hon'ble ITAT in ITA No.884 & 928/M/2007 for AY 2002-03 has been reproduced. The ITAT had in the said order relied on the Judgment of this Court in ***Commissioner of Income-Tax-2, Mumbai Vs. HDFC Bank Ltd.***[1] which in turn relied upon the Judgment of this Court in ***Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd.***[2] It was held that where the Assessee's own funds and other non-interest bearing funds were more than the investment in the tax free securities, there shall be no disallowance

1 *[2014] 49 taxmann.com 335(Bombay)*
2 *[2009] 178 Taxman 135 (Bombay)*

required to be made out of interest expenses under Section 14A of the Income Tax Act.

3. In ***Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. (supra)*** this Court had held that where interest-free funds available to an Assessee are sufficient to meet its investments and at the same time the Assessee has raised a loan it can be presumed that the investments were from the interest-free fund available. The principle therefore, would be that if there are funds available both interest-free and overdraft and / or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the Company, if the interest-free funds were sufficient to meet the investments. Accordingly, the Appeal of the Revenue from the order of the Commissioner of Income Tax (Appeals) which had accepted the Assessee's contention and directed the AO to allow the entire amount of interest under Section 36(1)(iii) of the Income Tax Act was dismissed.

4. The ITAT in the impugned order was of the view that there is no change in the factual and legal position for the year under consideration. The ITAT held that the disallowance of interest by AO

was contrary to law and facts.

5. In the Assessment year under consideration (AY 2007-08) the Assessee's own funds for the relevant period i.e. for the year ended 31st March, 2007 is Rs.411.21 Crores. Whereas the opening balance of investments including stock in trade and equity shares and mutual fund is Rs.202.545 Crores and closing balance of investments including stock in trade of equity share and mutual fund is Rs.120.521 Crores. Thus, following the ratio of the aforementioned decisions of this Court in ***Commissioner of Income Tax-2 Vs. HDFC Bank Ltd. (supra)*** and ***Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. (supra)*** which have been relied upon in the Assessee's own case as aforementioned and given that the Assessee's own funds are more than the investments in tax free security, the Revenue was not entitled to disallow the interest expenses under Section 36(1)(iii) of the Income Tax Act.

6. Further, in the decision of Supreme Court in ***South Indian Bank Ltd. Vs. Commissioner of Income Tax***[3], the Supreme Court has held that ***Commissioner of Income Tax-2 Vs. HDFC Bank Ltd. (supra)*** has correctly interpreted the scope of Section 14A of the

3 *[2021] 130 taxmann.com 178(SC)*

Act.

7. In view of the aforementioned decisions of the Supreme Court and this Court, we find that no substantial question of law has been raised in the present Appeal.

8. The Income Tax Appeal is accordingly dismissed. There shall be no orders as to costs.

[FARHAN P. DUBASH, J.] **[R.I. CHAGLA, J.]**