

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA 41/2015 C.M. No.986/2015

**GEBR PFEIFFER (INDIA) PRIVATE LIMITED ..... Appellant**

Through: Mr. Salil Aggarwal with Mr. Prakash Kumar and Mr. Anil Makhija, Advocates.

versus

**COMMISSIONER OF INCOME TAX ..... Respondent**

Through: Ms. Rubal Maini, proxy for Mr. Balbir Singh, Sr. Standing Counsel.

CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE R.K.GAUBA

**O R D E R**

03.02.2015

Issue notice. Ms. Rubal Maini, proxy counsel accepts notice on behalf of the Revenue.

The assessee is aggrieved by the addition of Rs.13,82,741/- under Section 14A. The assessee/appellant had declared tax free dividend income to the tune of Rs. 2,71,83,864/-. The ITAT confirmed the order of the CIT (A) and rejected the assessee's contentions on this score.

The assessee relies upon the decisions of this Court in Maxopp Investment Ltd. v. Commissioner of Income Tax, (2012) 347 ITR 272 (Del), especially holding - upon an interpretation of Section 14A (2) and (3) read with Rule 8, that: -

“It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in Rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt-income, the Assessing Officer would have to indicate cogent reasons for the same.”

It is further contended that this ruling was reiterated and applied in another decision CIT-VI v. Taikisha Engineering India Ltd., 370 ITR 338 (Del) where the Court further spelt out as follows: -

“17. More important and relevant for us are the observations in Godrej and Boyce Mfg. Co. Ltd. (supra) on requirement and stipulation of satisfaction ITA 115/2014 and 119/2014 Page 17 of 20 being recorded by the Assessing Officer with reference to the accounts under Section 14(2) of the Act and Rule 8D(1) of the Rules. It was observed:-

Parliament has provided an adequate safeguard to the invocation of the power to determine the expenditure incurred in relation to the earning of non-taxable income by adoption of the prescribed method. The invocation of the power is made conditional on the objective satisfaction of the Assessing Officer in regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee. When a statute postulates the satisfaction of the Assessing Officer ‘‘Courts will not readily defer to the conclusiveness of an executive authority’s opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated’’. (M. A. Rasheed v. State of Kerala [1974] AIR 1974 SC 2249\*). A decision by the Assessing Officer has to be arrived at in good faith on relevant considerations. The Assessing Officer must furnish to the assessee a reasonable opportunity to show cause on the correctness of the claim made by him. In the event that the Assessing Officer is not satisfied with the correctness of the claim made by the assessee, he must record reasons for his conclusion. These safeguards which are implicit in the requirements of fairness and fair procedure under article 14 must be observed by the Assessing Officer when he arrives at his satisfaction under sub-section (2) of section 14A. As we shall note shortly hereafter, sub-rule (1) of rule 8D has also incorporated the essential requirements of sub-section (2) of section 14A before the Assessing Officer proceeds to apply the method prescribed under sub-rule (2).’’

It is thus contended that the appellant’s contentions with respect to the applicability of Section 18A and Rule 8D were brushed aside, and besides, more importantly, in the absence of satisfaction recorded by the Assessing Officer, no jurisdiction could be claimed to make the disallowance to the extent of Rs.13,82,741/-

Counsel for the Revenue contends that the order of the ITAT is justified. It is pointed out that the assessee did not agitate the issue of jurisdiction specifically with respect to lack of satisfaction recorded by the AO, even though such contention was advanced in the appellate proceedings. It was submitted that the CIT (A) went into this aspect, as is evident from reading of paragraphs 5.2 - 5.4 of that order. Learned counsel stressed on the circumstance that the AO called for an explanation and dealt with it, itself, which implied that he was not satisfied with respect to the explanations offered by the assessee.

This Court has considered the submissions. The statutory disallowance mandated by Section 14A - the procedure to which - has been subsequently spelt out in Rule 8D, has been interpreted in Maxopp and Taikisha (supra) in a particular manner, i.e., that the AO would first needs to be satisfied as to the assessee’s explanation, or its absence [see Section 14A (3)] before coming to the conclusion that some expenditure was in fact incurred or deemed to have been incurred. The importance of this was stressed in these two decisions. Though the grounds of appeal in the CIT (A) proceedings do not expressly

spell out this aspect, it cannot be denied that this matter was agitated before the CIT (A) for hearing as well as before the ITAT. At the same time, this Court notices that in both Maxopp and Taikisha, and the ultimate order made by both the Division Benches was to remit the matter for fresh consideration by the AO. Perhaps this was necessitated by the fact that the interpretation of Section 14A - guided by Rule 8D was in the light of the decision in Godrej and Boyce Mfg. Co. Ltd. vs. CIT [2010] 328 ITR 81 (Bom.) and the fact that the Rule 8D was brought in later, i.e., w.e.f. AY 2008-09.

Having regard to this conspectus of facts, the matter is remitted to the Assessing Officer for consideration whether, in fact, there was any necessity for invoking the Section 14A (3) read with relevant part of Rule 8D. All rights and contentions of the parties are open. It goes without saying that the AO would be guided and bound by the decision in Maxopp and Taikisha (supra).

The appeal stands disposed off as above.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 03, 2015