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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 283/2014

COMMISSIONER OF INCOME TAX-IV Appellant

Through: Mr Kamal Sawhney, Senior Standing Counsel and Mr Ragvendra Singh, Junior Standing Counsel and Mr Shikhar Garg, Advocate.

versus

I.P.SUPPORT SERVICES INDIA (P) LTD. Respondent

Through: Mr Piyush Kaushik, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

24.09.2015

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1. The appeal by the Revenue is directed against the order dated 8th August, 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.524/Del/2013 for Assessment Year ('AY'2009-10.

2. By order dated 24th August 2015, this Court issued notice in the present appeal, albeit, confined to question as to whether the ITAT erred in affirming the order of the Commissioner of Income Tax (Appeals) [CIT(A)] in deleting the disallowance on account of invoking Rule 8D read with

Section 14A of the Income Tax Act, 1961?

3. Learned counsel for the Assessee has placed on record a copy of the order passed by the Assessing Officer ('AO') by pointing out that the copy at Annexure-I is not the correct copy.

4. The Assessee is a company engaged in the business of providing legal support and other support services to law firms. These services are specifically related to search of trade mark, patent and design out of the unique data base created and owned by the Assessee. The Assessee filed its return of income on 22nd September 2009 showing the total income at Rs. 3,16,74,931/-. The case of the Assessee was picked up for scrutiny and notice under Section 143(2) was issued and served on the Assessee on 25th August, 2010.

5. In the order dated 2nd December, 2011, the AO observed that the Assessee had a dividend income of Rs.2,38,13,275/-. The Assessee was asked to furnish an explanation as to why the expenses relevant to the earning of dividend should not be disallowed under Section 14A of the Act. The Assessee's representative submitted that as no expenses have been incurred for earning of dividend income, this was not a case for making any

disallowance. The AO, *inter alia*, observed that “the invocation of Section 14A is automatic and comes into operation, without any exception, as soon as the dividend income is claimed as an exemption. The AO proceeded to disallow the amount of Rs.33,35,986/- under Section 14A read with Rule 8D of Income Tax Rules, 1962 and added the said amount to the total income of the Assessee.

6. The CIT (A) allowed the appeal filed by the Assessee by an order dated 29th November, 2012 after recording a finding that the AO had failed to examine the contention of the Assessee that it had sufficient funds of Rs.83.13 crores and “no borrowing, for whatever purposes, was resorted to (no interest expenditure was incurred) and investments generating tax exempt income were done by using administrative machinery of PMS, who did not charge any fees.” It was further found by the CIT(A) that contrary to the decision of this Court in ***Maxopp Investment (P) Ltd. v. CIT (2012) 347 ITR 272 (Del)***, the AO had failed to record the AO’s satisfaction after examining the accounts which was requirement for invoking Section 14A of the Act.

7. In the impugned order dated 8th August, 2013, while dismissing the

Revenue's appeal, the ITAT has additionally noted that the CIT (A) has followed the order of the ITAT for AY 2007-08.

8. Having heard the learned counsel for the parties, the Court finds that the AO has indeed proceeded on the erroneous premise that the invocation of Section 14A is automatic and comes into operation as soon as the dividend income is claimed exempt. In *Maxopp Investment (P) Ltd. (supra)* this Court held:

“30. Sub-section (2) of section 14A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of section 14A. Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred

in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of section 14A of the said Act. **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.” (emphasis supplied)

9. In *CIT v. Taikisha Engineering India Ltd. 370 ITR 338 (Del.)*, in similar circumstances, the Court disapproved of an AO invoking Section 14A read with Rule 8D (2) of the Rules without recording his satisfaction and noted that the recording of satisfaction as to why “the voluntary disallowance made by the assessee was unreasonable and unsatisfactory” is a mandatory requirement of the law.

10. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 24, 2015
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