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

% Judgment delivered on: 21.11.2016

\+ **ITA 470/2016**

INDIABULLS FINANCIAL SERVICES LTD ..... Appellant
Through: Mr. G.C. Srivastava and Mr. Daksh S. Bhardwaj, Advs.

versus

DCIT CIRCLE 11(1) ..... Respondent
Through: Mr. Ruchir Bhatia and Mr. Puneet Rai, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J (Oral)

ITA 470/2016 & CM No. 26633/2016

1. The issue in this appeal under Section 260A of the Income Tax Act, 1961 (in short the 'Act') is the Revenue's action in disallowing Rs. 3,87,10,146/- under Section 14A of the Act. The assessee urges that without recording his dissatisfaction as a prelude to the exercise conducted by him under the said provisions, further disallowance was not possible.

2. The facts are that the assessee had reported Tax Exempt Income to the tune of Rs. 105.24 crores, during Assessment Year ('AY') 2009-10. The assessee had offered disallowance of Rs. 25,19,380/-

as expenses attributable to that exempt income. The Assessing Officer ('AO') after carrying out an elaborate analysis of the provisions as well as Rule 8D and also after discussing the relevant case law concluded that Rs. 3,87,10,146/- had to be disallowed and he proceeded to do so.

3. The Commissioner of Income Tax (Appeals) [CIT(A)] by independent reasoning and analysis of Section 14A and Rule 8D was of the opinion that the preliminary stage of recording satisfaction with respect to the amount offered by the assessee as disallowance i.e. expenses attributable to the earning of exempt income, had not been carried out in which the AO would have been clothed with jurisdiction to enter into the next stage and calculate the disallowance in terms of Rule 8D.

4. The Income Tax Appellate Tribunal (in short the 'Tribunal') reversed the CIT(A)'s opinion and held that in the circumstances of the case the opinion expressed by the AO was sufficient and justified the disallowance ultimately made.

5. It is urged by the assessee that the ITAT has fallen into error in as much as it premised its conclusion and the working out of the disallowance based upon Rule 8D(iii) carried out by the AO in the first instance in this case. It is urged that ITAT ignored the fact that there had to be good and cogent reason, in the AO's opinion to persuade him to reject the amount offered as expenses i.e. Rs. 25,19,380/-. In this case the learned counsel relied upon the decision of this Court in ***Commissioner of Income Tax-I vs Consolidated Photo & Finvest Ltd. (2012) 25 Taxman.com 371 (Delhi)***. In the

present instance the AO carried out an elaborate analysis of Section 14A as well as the applicable case law and thereafter proceeded to state as follows:

> *".... Further the case laws relied upon by the assessee have also been thoroughly examined and it is found that all the decisions have somehow unanimously have laid down certain ratios to be followed by the Assessing Officer before invoking the provision of section l4A of I T Act. These common ratios are as under:-*
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> *1. The assessing officer has to draw dissatisfaction in regard to the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not form part of the total income.*
>
> *2. The satisfaction of the assessing officer must he arrived at on an objective basis.*
>
> *3. If the assessing officer wants to disallow an expenditure under a particular provision then the onus would be on the assessing officer to prove that conditions for disallowance are satisfied.....*
>
> *.....The investment made, being a conscious decision and having deployment of funds clearly brings into picture expenditure by way of cost of funds, "Invested." Composite fund having cost needs to be spread so as to apportion appropriate cost of funds invested in the activity lending to carrying of exempt income.*
>
> *In view of above, the provisions of sub sections (2) of section 14 A and Rule 8D of IT Rules are in operation and therefore will strictly he adhered to by the assessee.*
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> *The language of subsection (1) of section 14A clearly provides that no deduction shall he allowed "in respect of expenditure incurred by the assessee in relation to income which does not form part of the total incon1e under this Act". On going through the simple and plain language, it is abundantly clear that the*

relation has to be seen between the exempt income and the expenditure incurred in relation to it and not vice versa. What is relevant is to work out the expenditure in relation to the exempt income and the expenditure incurred in relation to it and not vice versa. What is relevant whether the expenditure incurred by the assessee has resulted into exempt income or taxable income. From the three clauses of rule 8D it clearly

emerges that stipulation of section is to compute the amount of expenditure which is not allowable u/s 14A as is relatable to the exempt income and not in considering all the expenses one by one for ascertaining if either of them have resulted into exempt income and thereafter considering such amount as disallowable u/s 14A. As discussed above, the assessee had substantial interest free surplus fund as compared to quantum of investment resulted in earning dividend income, hence, the assessee's contention in regard to non deployment of interest bearing borrowed fund in investment, is acceptable, however, keeping in view the substantial growth in investment during the year as compared to previous year, and quantum of tax free dividend income received. The third clause of Rule 8D is dearly attracted. The assessee has also invoked the p1·ovision of section 14A of I T Act while disallowing an amount of Rs.2519380/- which is the amount paid to two employees as salary who have been exclusively involved in looking after the investment affairs of the company. Total disallowance is worked out as per Rule 8D of I.T. Rules here as under..."

6. This Court in the ***Consolidated Photo & Finvest Ltd.*** (supra) – following the judgment of the Bombay High Court in ***Godrej & Boyce Mfg. Co. Ltd. vs Dy. CIT (2010) 194 Taxman 203***, held that the AO has to take an overall view and not a "piecemeal decision" regarding merits of the disallowance. A close analysis of that

judgment would show the AO's view was reversed by the CIT(A) in that case which was ultimately affirmed by the ITAT. This factor significantly dissuaded the Court from exercising its jurisdiction under Section 260A of the Act.

7. Undoubtedly, the language of Section 14A presupposes that the AO has to adduce some reasons if he is not satisfied with the amount offered by way of disallowance by the assessee. At the same time Section 14A (2) as indeed Rule 8D(i) leave the AO equally with no choice in the matter inasmuch as the statute in both these provisions mandates that the particular methodology enacted should be followed. In other words, the AO is under a mandate to apply the formulae as it were under Rule 8D because of Section 14A(2). If in a given case, therefore, the AO is confronted with a figure which, prima facie, is not in accord with what should approximately be the figure on a fair working out of the provisions, he is but bound to reject it. In such circumstances the AO ordinarily would express his opinion by rejecting the disallowance offered and then proceed to work out the methodology enacted.

8. In this instance the elaborate analysis carried out by the AO – as indeed the three important steps indicated by him in the order, shows that all these elements were present in his mind, that he did not expressly record his dissatisfaction in these circumstances, would not *per se* justify this Court in concluding that he was not satisfied or did not record cogent reasons for his dissatisfaction to reject the AO's conclusion. To insist that the AO should pay such lip service regardless of the substantial compliance with the provisions would, in

fact, destroy the mandate of Section 14A.

9. Having regard to these facts, this Court is satisfied that the disallowance which is otherwise in accord with Rule 8D(c) was justified. No substantial question of law arises. The appeal is dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 21, 2016/kk