

\$~6

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

+ ITA 953/2015

PRADEEP KHANNA Appellant
Through: Mr.Rajesh Mahna and Mr.Manu
K.Giri, Advocates
versus

ACIT CIRCLE 30(1) DELHI Respondent
Through: Mr.Rahul Chaudhary, Sr.Standing
Counsel and Mr.Raghuvendra Singh,
Jr.Standing Counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **11.08.2016**

1. Admit.
2. With the consent of counsels for the parties appeal was heard.
3. The following question of law arises for consideration of this court:

“Did the ITAT fall into error in upholding the decision of the lower authority viz-a-viz the disallowance under Section 14A of the Indian Income Tax Act?”

4. The relevant facts are that the assessee had reported a tax exempt dividend income of ₹10,87,898/- and he had, however, not claimed any expenditure for earning that income. Purporting to apply the statutory disallowance under Section 14A read with Rule 8D of the Income Tax Rules, the AO ascribed a sum of ₹1,21,805/- and added it back to the taxable income. The assessee contends that the

methodology adopted and entire approach of the revenue is foul. In this connection it is urged that the bulk of the tax exempted income was earned interest which was credited to the bank account and also with respect to the dividends earned went straight into the personal bank account without the interaction of any special personnel. The revenue on the other hand urged that the assessee carries on business and in the course of such business he engaged an accountant who was also tasked with the job of looking after the accounts and investments which yielded a sum of ₹10,87,898/-.

5. The assessee relied upon the judgment of this court in ***Commissioner of Income Tax vs. Taikisha Engineering Private Limited 370 ITR 338 (Del)*** and the ITAT's decision for a previous year i.e. ***Pradeep Khanna vs. ITO Ward-23 (1) New Delhi ITA No.1250/Del/2014***.

6. In ***Taikisha Engineering Private Limited's*** case (*supra*) this court had after analysing Section 14A and Rule 8D (of the Income Tax Rules) held as follows:

“Sub-rule (1) categorically and significantly states that the Assessing Officer having regard to the account of the assessee and on not being satisfied with the correctness of the claim of expenditure made by the assessee or claim that no expenditure was incurred in relation to income which does not form part of the total income under the Act, can go on to determine the disallowance under sub-rule (2) to Rule 8D of the Rules. Sub-rule (2) will not come into operation until and unless the specific pre-condition in sub-rule (1) is satisfied. Thus, section 14A (2) of the Act and rule 8D (1) in unison and affirmatively record that the computation or disallowance made by the assessee or claim that no expenditure was incurred to

earn exempt income must be examined with reference to the accounts, and only and when the explanation/claim of the assessee is not satisfactory, computation under sub-rule (2) to rule 8D of the Rules is to be made.”

7. In the present case, we notice that the AO has not analysed objectively in terms of the decision in Shah. It was firstly incumbent upon him to in fact examine the accounts closely and determine if at all any expenditure could be ascribed to the tax exempt dividend/interest earned by the assessee. If indeed the tax exempted income was earned without the interference of any employee but rather through the solicitation and advertisement of the bank the question of attributing any expenditure cannot arise at all.

8. In the circumstances, the impugned order is set aside. The matter is remitted to the AO for fresh determination in accordance with the judgment of this court in *Taikisha Engineering Private Limited's* case (*supra*).

9. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 11, 2016

rb