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

% Date of Decision : 2nd, July, 2012.

\+ ITA 1290/2011

CIT-I ..... Appellant
Through : Sh. Deepak Chopra and Sh. Harpreet Singh Ajmani, Advocates.

versus

M/S. CONSOLIDATED PHOTO & FINVEST LTD ..... Respondent
Through: Ms. Kavita Jha and Sh. Somnath Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V. EASWAR

R.V.EASWAR, J.: (ORAL)

This appeal by the revenue, filed under section 260A of the Income Tax Act, 1961 ('Act', for short) is directed against the order passed by the Income Tax Appellate Tribunal ('Tribunal', for short) on 13.5.2011 in ITA No.5519/Del/10.

2. The revenue seeks to raise the following question as a substantial question of law for adjudication :

> "(A) Whether the Tribunal was justified in not remitting the matter back to the AO for re-computation of the disallowance under section 14A of the Act since the AO had applied Rule 8D and there arose no occasion for him to examine whether the disallowance made by the assessee in respect of expenses pertaining to exempt income was appropriate or not?"

3. In our opinion no substantial question of law arises for our decision. The

assessee is a company engaged in the business of giving loans and earning interest income. It also earned commission income on trading of goods and freight investment made in mutual funds. In the return filed for the assessment year 2007-08, the assessee itself made a disallowance of Rs.36,64,485/- under Section 14A of the Act out of the total expense of Rs.47,73,534/- incurred by it. The assessee was in receipt of tax-free dividend of Rs.88,53,317/- and tax-free long-term capital gains of Rs.3,71,00,919/-. According to the assessee, expenses to the tune of Rs.36,64,485/- were incurred in relation to the earning of the aforesaid two items of tax-free income and therefore had to be disallowed as mandated by Section 14A. The Assessing Officer, while completing the assessment, without examining the merits of the assessee's stand, straightaway proceeded to apply Rule 8D of the Income Tax Rules, 1962 and disallowed a sum of Rs.78,70,570/- as expenses incurred in relation to the earning of exempt income. It may be noted that the disallowance computed by the Assessing Officer was much more than the total expenses of Rs.47,73,534/- incurred by the assessee to earn both exemption and taxable income.

4. On appeal by the assessee, the CIT(Appeals) observed that the Assessing Officer did not point out any discrepancy in the disallowance offered by the assessee itself nor was there any material to show that further expenditure needs to be disallowed under Section 14A. He held further that Rule 8D of the Income Tax Rules was notified only on 24.3.2008 and therefore took effect only from the assessment year 2008-09. In this view of the matter and applying the judgment of the Bombay High Court in the case of ***Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT*** in ITA 626/2010 where it was held that Rule 8D took effect only from the assessment year 2008-09, the CIT(Appeals) held that the disallowance worked out by the Assessing Officer was not justified. He accordingly, deleted the further disallowance made by Assessing Officer and allowed the assesses's appeal on this point.

5. The revenue carried the matter in appeal before the Tribunal. The Tribunal noticed the method adopted by the assessee in making a disallowance of

Rs.36,64f,485/- out of the total expense of Rs.47,73,534/-. It found no discrepancy or error in the disallowance made by the assessee. The basis adopted by the assessee has been set out in para 4.2 of the order of the Tribunal in a tabular form. The Tribunal also held that Rule 8D applied only from the assessment year 2008-09, as held by the Bombay High Court in the judgment cited supra. It would appear that the computation was put to the representative of the department for comments, but he was not able to point out any error in the same. This has been recorded by the Tribunal in para 5 of its order. In this situation, the Tribunal did not feel any need for interfering with the decision of the CIT(Appeals) and the appeal of the revenue on this point was dismissed.

6. The objection of the ld. standing counsel before us is that the Tribunal ought to have remitted the matter back to the Assessing Officer for re-computation of the disallowance made under Section 14A of the Act, since he had no occasion to examine whether the disallowance made by the assessee was sufficient or not because of the view he took, that is to say, that Rule 8D was applicable to the assessment year in consideration (2007-08). We are not able to uphold the objection. It was for the Assessing Officer to examine whether the disallowance offered by the assessee itself was sufficient on the facts and circumstances of the case, notwithstanding the view he took regarding the applicability of Rule 8D. It is not expected of him to take piecemeal decisions regarding the merits of the disallowance. In any case, when the disallowance was taken in appeal before the CIT(Appeals), the judgment of the Bombay High Court (supra) was available and it was for the Assessing Officer to take out a plea before the CIT(Appeals) that the disallowance offered by the assessee was not sufficient, even if Rule 8D was not applicable but this was not done. When the matter reached the Tribunal, the Tribunal specifically called upon the departmental representative to point out any error in the computation of the disallowance made by the assessee, but he was not able to point out any error in the same. In these circumstances, we are of the opinion that no strong grounds have been made out for

disturbing the decision of the Tribunal. The Tribunal, in our view was not in error in not remitting the matter to the Assessing Officer for fresh consideration.

7. The ld. standing counsel referred to the judgment dated 18th November, 2011 of this Court in the case titled ***Maxopp Investment Ltd. vs. CIT*** ITA No. 687/2009 and contended that in view of the directions given by the Court in this decision, it would be proper and more appropriate for the Assessing Officer to examine the disallowance to be made under Section 14A over again. Each case has to turn on its facts. We do not think that any broad generalization can be made in such a matter which is purely factual. As already noted, a substantial amount of the total expense incurred by the assessee, for earning both taxable and non-taxable income, has been offered for disallowance by the assessee itself. Neither the CIT(Appeals) nor the ld. Departmental representative who appeared before the Tribunal could point out any error or serious discrepancy in the basis adopted by the assessee for making the disallowance. In these circumstances, particularly having regard to the facts of the case before us, we do not think any substantial question of law arises for decision.

8. For the above reasons we find no merit in the appeal and the same is dismissed with no order as to costs.

R.V.EASWAR, J.

S. RAVINDRA BHAT, J

JULY 02, 2012
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