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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NO. 439/2013**

Date of decision: 23rd September, 2013

COMMISSIONER OF INCOME TAX-IV

..... Appellant

Through Mr. Kamal Sawhney, Sr. Standing
Counsel.

versus

M/S HERO MANAGEMENT SERVICE LIMITED

..... Respondent

Through Mr. Satyen Sethi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

This appeal by the Revenue, which pertains to Assessment Year 2007-08, raises two issues. The first issue relates to disallowance under Section 14A of the Income Tax Act, 1961 and the second issue relates to disallowance of provision for current liabilities of Rs.2,51,96,577/-.

2. At the outset, we notice the casual and insouciant approach adopted by the Assessing Officer, who had made additions of Rs.6,75,64,435/-, to the returned income of Rs.85,970/- in an order dated 31st March 2007, which is bereft of contentions being noticed and rejected by a reasoned discussion.

3. The Assessing Officer applied Rule 8D without even mentioning



that pre-conditions for invoking Rule 8D were satisfied. He did not take into consideration the submission of the respondent-assessee that the deposit of Rs.2 crores in the Kotak Flour Short-Term Weekly Dividend Option was made out of share allotment money and the money deposited did not represent loan. These facts have been noticed by the appellate authorities, including the tribunal.

4. The assessee had made investment of Rs.2,44,71,261/- in mutual funds. The substantial investment of Rs.2 crores was made, as noticed above, from share allotment money. Dividend of Rs.3,95,439 was received from this fund. Dividend of Rs.153/- and Rs.1649/- was received from two mutual funds. Thus in all dividend income of Rs.3,97,241/- was received. The assessee had himself disallowed an amount of Rs.99,310/- under Section 14A. The tribunal has held that the aforesaid disallowance was reasonable. The Assessing Officer had disallowed an amount of Rs.69,65,686/- and held this was the reasonable expenditure incurred to earn dividend income of Rs.3,95,439/-. In view of the facts noticed above, the contention of the revenue is rather far-fetched, if not perverse and illogical.

5. Calculation mistakes while applying Rule 8D were pointed out by the respondent-assessee, but these have not been adverted to in view of the findings recorded by the tribunal on merit. Rule 8D is not retrospective as held by this Court in **Maxopp Investment Limited v.**



CIT, (2012) 347 ITR 272 (Del.). Further to invoke Rule 8D, t

Assessing Officer has to first record a finding that he was not satisfied with the correctness of the claim for expenditure made by the assessee in relation to income, which did not form part of the total income under the Act. No such satisfaction has been recorded by the Assessing Officer.

6. With regard to the second issue, the Assessing Officer had made addition of Rs 2,51,96,577; recoding as vide:-

“Disallowance of provision for current liabilities
From the details furnished in respect of provision for expenses, it is seen that the assessee has made the following provisions, which are not admissible:

Provision for Salary 2006-07	Rs 1,86,651
Electricity expenses for year 2006-07 now provided	Rs 2,39,80,283
AMC charges of Serviont Global dialer	Rs 10,29,643
Total	Rs 2,51,96,577

Since this provision is not allowable, the amount of Rs 2,51,96,577 is disallowed and added to the income of the assessee. Since I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) are being initiated separately.”

7. This is the entire discussion on the said addition, in the assessment order. The amounts in question are substantial. The Assessing Officer must discuss the facts before he affirms his final



conclusion, especially when significant additions are made creating t liability.

8. CIT(Appeals) has observed that the assessee had entered into an agreement with Palm Court Maintenance Agency and monthly payment of Rs.15,00,000/- was being paid as on interim basis/arrangement. The said agency was providing electricity and other maintenance services in the call centre and back office business operations. After the end of the of the year on the basis of actual consumption of electricity etc, settlement of accounts was drawn up by the agency and agreed to, and thereupon payment of Rs.2,40,85,668/- was made for the whole year after deducting TDS. We fail to understand how and on what basis in view of the said factual finding, the conclusion can be questioned. Similarly, with regard to salary of Rs.1,86,651/-, it is pointed out that salary pertains to this year but was paid in the next year. AMC charges of Rs 10,29,643 relate to this year in question. The Supreme Court decision in ***Bharat Earth Movers v. CIT*** (2000) 245 ITR 428 (SC) is of relevance and observes:-

“The law is settled: If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in present though it will be discharged at a future date. It does not make any



difference if the future date on which the liability shall have to be discharged is not certain . . .

A few principles were laid down by this court, the relevant of which for our purpose are extracted and reproduced as under:

- (i) For an assessee maintaining his accounts on the mercantile system, liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in the case of amounts actually expended or paid ;
- (ii) Just as receipts, though not actual receipts but accrued due are brought in for income-tax assessment, so also liabilities accrued due would be taken into account while working out the profits and gains of the business;
- (iii) A condition subsequent, the fulfillment of which may result in the reduction or even extinction of the liability, would not have the effect of converting that liability into a contingent liability ;
- (iv) A trader computing his taxable profits for a particular year may properly deduct not only the payments actually made to his employees but also the present value of any payments in respect of their services in that year to be made in a subsequent year if it can be satisfactorily estimated.”

9. The factual findings recorded by the tribunal in light of the aforesaid ratio, vindicates the conclusion of the tribunal.

10. In view of the aforesaid discussion, we do not find any reason to interfere with the impugned order. The appeal has no merit and is dismissed in limine.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

**SEPTEMBER 23, 2013
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