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

\+ ITA 448/2024, CM APPL. 47391-92/2024

PR. COMMISSIONER OF INCOME TAX-1, DELHI

.....Appellant

Through: Mr. Sanjay Kumar, SSC with Ms. Esha, Adv.

versus

M/S CANDOR KOLKATA ONE HI-TECH STRUCTURE P. LTD. .....Respondent

Through: Mr. Rishabh Malhotra,Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 20.08.2024

1. Having heard learned counsels for respective parties and on going through the judgment handed down by the Income Tax Appellate Tribunal ["**Tribunal**"], we note that insofar as the issue of Section 14A of the Income Tax Act, 1961 [**"Act**"] is concerned, the Tribunal has upheld the view taken by a Coordinate Bench and observed as follows:-

> "3. In regard to the **issue no 1 of disallowance u/s 14A of the Act** on hearing the parties it comes up that there is no denial to the proposition of law that the Ld. Assessing Officer must record his satisfaction in terms of Section 14A(2) of the Act with regard to the suo moto disallowances made by an assessee. The assessee has claimed that no satisfaction has been recorded by the Ld. AO and relying the judgment of Hon'ble Supreme Court of India in Maxopp Investment Ltd. vs. CIT (2018) 91 taxmann.com 154 (SC) it is submitted that the issue has been considered in favour of the assessee in ITA No. 4032/De1/2015 (supra). The Ld. DR however tried to resist the argument of Ld. AR submitting that the order of Ld. AO has sufficient reasons for disallowance. After taking into consideration the nature of business of the assessee and the expenditure, the Bench is of considered view that the findings arrived by the Co-ordinate Bench in ITA No. 4032/De1/2015

(supra) are squarely applicable and for the benefit, relevant para 8 and 9 are reproduced below :

> "8. Ground No.3 concerns challenge to the disallowance of Rs.22,99,529/ - made by the Assessing Officer under Section 14A of the Act. In this regard, we take note of the following arguments raised on behalf of the assessee, i.e., (i) a suo motu disallowance of Rs.5,45,306/- has been carried out which is the total indirect expenses and all other expenses claimed are directly attributable to SEZ operations and has no relation to the exempt income earned by way of dividend on mutual fund investment (ii) where suo motu disallowance has been made the Assessing Officer is required to form `satisfaction' in terms of Section 14A of the Act for higher disallowance which has not been made and thus the formula provided for quantification of disallowance under Rule 8D automatically apply.
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> 9. We find merit in the plea of the assessee that the disallowance cannot exceed the actual expenditure incurred in relation to the earning of the exempt income. In the instant case, no direct expenses has been incurred and the disallowance has been carried out under Rule 8D(2)(iii) of the Rules in respect of indirect expenses. The disallowance has been carried out at Rs.22,99,529/ - (being 0.5% of the average value of investments) in place of the disallowance offered amounting to Rs.5,45,306/ -. The action of the Assessing Officer is apparently without application of mind inasmuch as the actual indirect expenditure available for allocation is Rs.5,45,306/- only. Other expenses incurred are stated to be directly attributable to SEZ operation and thus cannot be subjected to estimated disallowance qua be exempt income. We thus find merit in the plea of the assessee. The Assessing Officer is directed to restore the position claimed by the assessee in this regard."
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> Accordingly, the grounds arising of this issue in the respective appeals are decided in favour of the assessee."

2. One of the other principal grounds which appears to have formed subject matter of consideration was whether the rental income earned by the respondent assessee from parking spaces created within the Special Economic Zone ["**SEZ**"] would qualify for deductions in terms of Section 80IAB of the Act.

3. Insofar as that aspect is concerned, the ITAT has followed the view taken by it in **M/s Unitech Developers and Projects Ltd.** [ITA No. 4032/Del/2015]. Presently and in the absence of instructions, Mr. Kumar is unable to apprise us whether any appeal was taken against the aforesaid decision.

4. We note that in *Unitech Developers*, the Tribunal had essentially taken into consideration the directives and guidelines framed by the Government of India itself and which obliged the SEZ developer to create parking spaces. It is the aforesaid aspect which appears to have weighed upon the Tribunal to hold that such income would be liable to be treated as one derived from the business of developing the SEZ itself. The view so taken, prima facie, clearly does not warrant interference.

5. Insofar as the question of rent received from fixed deposits are concerned, we prima facie find merit in the challenge which stands raised by Mr. Kumar, with it being submitted that it clearly would not fall within the ambit of "income derived" from operating the SEZ and could at best been viewed as an "investment".

6. However and in order to enable Mr. Kumar, learned counsel to obtain further instructions, let this appeal be called again on 24.09.2024.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 20, 2024/*neha*