
(2013) 01 DEL CK 0384
In the Delhi High Court
Case No : ITA 605 of 2012

CIT

APPELLANT

Vs

Oriental Structural Engineers Pvt. Ltd.

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Income Tax Act, 1961 — Section 14A

Citation : (2013) 216 TAXMAN 92

Hon'ble Judges : R.V. Easwar, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sanjeev Rajpal, for the Appellant; Rajat Navet and Ms. Prachi V. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the revenue against the order dated 02.12.2011 passed by the Income Tax Appellate Tribunal, New Delhi in ITA No. 4245/Del/2011 in respect of the assessment year 2008-09. The issue before the Tribunal, which is also an issue before us, was whether in the facts and circumstances of the case the Commissioner of Income Tax (Appeals) had erred in restricting the disallowance u/s 14A of the Income Tax Act, 1961 to 2% of dividend income of Rs. 20,27,812/-. It was the contention of the revenue that Rule 8D of the Income Tax Rules, 1962 had not been applied properly in respect of the assessment year 2008-09. This aspect has been considered by the Tribunal in detail and it has observed as under:-

6.3 We have carefully considered the submissions and perused the records. We find that Ld. Commissioner of Income Tax (Appeals) has given a finding that only interest of Rs. 2,96,731/- was paid on funds utilized for making investments on which exempted income was receivable. Further, Ld. Commissioner of Income Tax (Appeals) has observed that in respect of investment of Rs. 6,07,775,000/- made in subsidiary companies as per documents produced before him, they are attributable to commercial expediency, because as per submission made by the

assessee, it had to form Special Purpose Vehicles (SPV) in order to obtain contracts from the NHAI and the SPVs so formed engaged the assessee company as contract to execute the works awarded to them (i.e. SPVs) by the NHAI. In its profit and loss account for the year, the assessee has shown the turnover from execution of these contracts and therefore no expense and interest attributable to the investments made by the appellant in the PSVs can be disallowed u/s. 14A r.w. Rule 8D because it cannot be termed as expense/interest incurred for earning exempted income. Under the circumstances, Ld. Commissioner of Income Tax (Appeals) is correct in holding that disallowance of a further sum Rs. 40,556/- calculated @ 2% of the dividend earned is sufficient. Under the circumstances, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals), hence we uphold the same.

2. On going through the above observations we are of the view that this is merely a question of fact and does not involve any question of law much less a substantial question of law, as the Tribunal held that the expenses which have been claimed by the assessee were not towards the exempted income. The disallowance, therefore, was rightly limited to a sum of Rs. 40,556/-. The question of interpreting Rule 8-D is not in dispute and the only dispute is with regard to facts which have been settled by the Tribunal. The appeal is dismissed.