

(2012) 08 DEL CK 0035
In the Delhi High Court
Case No : ITA No. 344 of 2012

CIT

APPELLANT

Vs

State Trading Corporation Ltd.

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Income Tax Act, 1961 — Section 14A

Citation : (2012) 08 DEL CK 0035

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Sanjeev Rajpal, for the Appellant; Kamal K. Jetley with Mr. Rahul Vats, Ms. Geetanjali Jetley and Mr. Praveen Aggarwal, for the Respondent

Judgement

Mr. Justice S. Ravindra Bhat

1. The revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) dated 28.10.2011 in ITA No. 822/Del/2010 and 3747/Del/2010. The question of law urged on its behalf in this appeal is the correctness of the Tribunal's order, rejecting its contention that a remand to work out a disallowance u/s 14A of the Income Tax was necessitated in this case. The facts necessary for the purposes of this case are that the assessee had during the relevant assessment year earned tax exempt income of Rs. 8,19,59,395/- which included tax free income of Rs. 2,27,00,240/-. The assessee did not furnish details of separate expenses pertaining to the earning of its exempted income. The AO disallowed Rs. 89,55,000/- working out the expenses u/s 14A. The assessee's appeal to the CIT (A) was substantially allowed and its contention of offering disallowance of Rs. 37,000/- towards probable indirect expenditure was upheld. Consequently, the disallowance of Rs. 89,55,000/- was set aside. The revenue's appeal was dismissed by the Tribunal. The revenue had relied upon the decision of the Bombay High Court in Godrej and Boyce Mfg. Co. Ltd. Vs. Dy. Commissioner of Income Tax, Range 10(2) and Others, . The Tribunal rejected the revenue's contentions on the premise that the assessee had adequate

resources to invest its amounts and that the investments which had yielded the dividend were made in earlier years. The ITAT, therefore, felt that there was no need to remit the matter on account of the Bombay High Court's decision.

2. Learned counsel for the Revenue contended that the approach and findings of the Tribunal are contrary to the decision of a Division Bench of this Court in *Maxopp Investment Ltd. v. CIT*, (2011) 203 Taxman 364 (Delhi) and that even though Rule 8D was inapplicable, nevertheless, disallowance had to be worked out in terms of Section 14A. It was emphasized that the judgment of the Division Bench of this Court in *Maxopp Investment* was categorical that in such matters where Rule 8D had been previously applied, the remand was in order.

3. Counsel for the assessee resisted the contentions on behalf of the appellant/revenue, and argued that the rule in *Maxopp Investment*'s case cannot be blindly followed and that the fact-situation in every case has to be taken into account. It was argued that the bonds which yielded the tax exempt interest income did not involve any expenditure; the material on record also showed that the assessee had sufficient funds to deploy for the purpose of such investment. It was also argued that this Court should be alive to the rule of consistency because in the previous years, the claim for disallowance had been rejected and the matters had achieved finality.

4. The Court has considered the submissions.

The Tax Administrators and Assessing Officers were, before the ruling of the Bombay High Court in *Godrej & Boyce*" and the subsequent Division Bench judgment of this Court in *Maxopp Investment*'s matter (*supra*) uniformly applying the method provided for under Rule 8D to work out the disallowance u/s 14A. These two rulings have now clarified that even though Rule 8D is inapplicable prior to the assessment year 2008-09, assessing authorities, have to nevertheless respect the mandate u/s 14A, and based on scientific method, work out the possible disallowance. This Court sees no reason to depart from the ruling in *Maxopp Investment*. The principle of consistency evoked by the assessee cannot under such circumstance assist it to contend that the mandate of Section 14A cannot be gone into altogether.

In view of the above reasons, the matter is remitted to the Assessing Officer who shall determine the extent of liability u/s 14A in terms of the Division Bench decision of this Court in *Maxopp Investment*'s matter (*supra*).