(2015) 09 DEL CK 0278

In the Delhi High Court

Case No : I.T.A. No. 283 of 2014

Commissioner of Income Tax — APPELLANT

Vs

I.P. Support Services India (P.) Ltd. — RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Income Tax Act, 1961 — Section 143(2), 14A

Citation : (2015) 378 ITR 240

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Kamal Sawhney, Senior Standing Counsel, Ragvendra Singh, Junior Standing Counsel and Shikhar Garg, Advocate, for the Appellant; Piyush Kaushik, Advocate, for the Respondent

Judgement

1. The appeal by the Revenue is directed against the order dated August 8, 2013, passed by the Income-tax Appellate Tribunal ("the ITAT") in I.T.A. No. 524/Del/2013 for the assessment year ("the AY") 2009-10. By order dated August 24, 2015, this court issued notice in the present appeal, albeit, confined to the question as to whether the Income-tax Appellate Tribunal erred in affirming the order of the Commissioner of Income-tax (Appeals) ("the CIT(A)") in deleting the disallowance on account of invoking rule 8D read with section 14A of the Income-tax Act, 1961?

2. Learned counsel for the assessee has placed on record a copy of the order passed by the Assessing Officer ("the AO") by pointing out that the copy at annexure I is not the correct copy.

3. The assessee is a company engaged in the business of providing legal support and other support services to law firms. These services are specifically related to search of trade mark/patent and design out of the unique data base created and owned by the assessee. The assessee filed its return of income on September 22, 2009, showing the total income at Rs. 3,16,74,931. The case of the assessee was picked up for scrutiny and notice under section 143(2) was issued and

served on the assessee on August 25, 2010.

4. In the order dated December 2, 2011, the Assessing Officer observed that the assessee had a dividend income of Rs. 2,38,13,275. The assessee was asked to furnish an explanation as to why the expenses relevant to the earning of dividend should not be disallowed under section 14A of the Act. The assessee''s representative submitted'' that as no expenses have been incurred for earning of dividend income, this was not a case for making any disallowance. The Assessing Officer, inter alia, observed that "the invocation of section 14A is automatic and comes into operation, without any exception, as soon as the dividend income is claimed as an exemption". The Assessing Officer proceeded to disallow the amount of Rs. 33,35,986 under section 14A read with rule 8D of the Income-tax Rules, 1962, and added the said amount to the total income of the assessee.

5. The Commissioner of Income-tax (Appeals) allowed the appeal filed by the assessee by an order dated November 29, 2012, after recording a finding that the Assessing Officer had failed to examine the contention of the assessee that it had sufficient funds of Rs. 83,13 crores and "no borrowing, for whatever purposes, was resorted to (no interest expenditure was incurred) and investments generating tax exempt income were done by using administrative machinery of PMS, who did not charge any fees". It was further found by the Commissioner of Income-tax (Appeals) that contrary to the decision of this court in Maxopp Investment Ltd. Vs. Commissioner of Income Tax, New Delhi, , the Assessing Officer had failed to record the Assessing Officer''s satisfaction after examining the accounts which was requirement for invoking section 14A of the Act.

6. In the impugned order dated August 8, 2013, while dismissing the Revenue''s appeal, the Income-tax Appellate Tribunal has additionally noted that the Commissioner of Income-tax (Appeals) has followed the order of the Income-tax Appellate Tribunal for the assessment year 2007-08.

7. Having heard the learned counsel for the parties, the court finds that the Assessing Officer has indeed proceeded on the erroneous premise that the invocation of section 14A is automatic and comes into operation as soon as the dividend income is claimed exempt. In Maxopp Investment Ltd. (supra) this court held (page 290 of 347 ITR):

"30. Sub-section (2) of section 14A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of section 14A , Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same."

(emphasis here printed in italics supplied)

8. In Commissioner of Income Tax-VI Vs. Taikisha Engineering India Ltd.--> , in similar circumstances, the court disapproved of an Assessing Officer invoking section 14A read with rule 8D(2) of the Rules without recording his satisfaction and noted that the recording of satisfaction as to why "the voluntary disallowance made by the assessee was unreasonable and unsatisfactory" is a mandatory requirement of the law. No substantial question of law arises. The appeal is dismissed.

