IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) Income Tax Appeal No.199 of 2014(O&M)
Date of Order: 16.02.2015

The Commissioner of Income Tax-I, Chandigarh

..Appellant

Versus

M/s A.B.Sugar Mills Ltd., Chandigarh

..Respondent

(2) Income Tax Appeal No.237 of 2014(O&M)

The Commissioner of Income Tax-I, Chandigarh

..Appellant

Versus

M/s A.B.Sugar Mills Ltd., Chandigarh

..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Urvashi Dhugga, Advocate,
for the appellant.

Mr. Nitin Kaushal, Advocate,
for the respondent.

RAJIVE BHALLA, J (Oral)

C.M.No.13733-CII of 2014 &
C.M.No.14726-CII of 2014

Prayer in these applications are to condone delay of 07 days in filing the appeals.

Notice of the applications to counsel for the non-applicant-respondent.

Counsel for the non-applicant-respondent states that he has no objection, if the applications are allowed.

In view of averments in the applications and the statement made by counsel for the non-applicant-respondent, we allow the applications and condone delay of 07 days in filing the appeals.

C.M.No.13734-CII of 2014 &
C.M.No.14727-CII of 2014

Allowed as prayed for..

Income Tax Appeal No.199 of 2014

As Income Tax Appeal Nos.199 and 245 of 2014 raise the same substantial questions of law and pertain to the same assessee, they shall be decided by a common order.

The revenue is before us challenging order dated 27.11.2013, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A;, Chandigarh.

Counsel for the revenue submits that the Income Tax Appellate Tribunal, after holding that Rule 8D of the Income Tax Rules, 1962 operates prospectively had no jurisdiction to arbitrarily and abruptly reduce disallowance from Rs.7,19,513/- to Rs.1,00,000/- and Rs.60,97,429/- to Rs. 5,00,000/- in ITA No.199 of 2014, and Rs.7,55,849 to Rs.1,23,754/-in ITA No.237 of 2014, without recording satisfaction much less by referring to any relevant facts. The impugned order, insofar as it has reduced the quantum of disallowance, may be set aside.

Counsel for the assessee submits that once it was held that Rule 8D of the Rules, operates prospectively, the Tribunal was fully justified in determining the quantum of disallowance. The mere fact that the Tribunal may not have assigned detailed reasons, cannot be a ground to hold that the order is contrary to law or raises any substantial questions of law.

We have heard counsel for the parties.

The question of law that arises for adjudication is whether the Tribunal could have reduced the quantum of disallowance without recording satisfaction in terms of Section 14A of the Act?

The dispute before the Assessing Officer, the CIT(A) and the ITAT, was whether Rule 8D was prospective or retrospective. The Tribunal rightly held that Rule 8D is prospective. A perusal of this Rule reveals that it does not, whether by words or intent, lend credence to the revenue's stand that Rule 8D is retrospective. The Tribunal, therefore, rightly placed reliance upon the judgment in ***Godrej & Boyce Manufacturing v. DCIT*** (supra), while holding that Rule 8D shall operate prospectively.

The matter, however, does not rest here. The Tribunal having held that Rule 8D operates prospectively, proceeded to reduce the quantum of disallowance without recording satisfaction or assigning any cogent reasons or referring to any relevant facts/ factors. The power to determine the quantum of disallowance, inhers the recording of satisfaction based upon relevant facts/factors. A perusal of the impugned order reveals that after holding that Rule

8D of the Rules is prospective in operation, the Tribunal abruptly or should we say arbitrarily proceeded to reduce the quantum of disallowance recorded by the Assessing Officer from Rs.7,19,513/- to Rs.1,00,000/- and Rs.60,97,429/- to Rs. 5,00,000/- in ITA No.199 of 2014, and Rs.7,55,849 to Rs.1,23,754/-in ITA No.237 of 2014, without reference to any relevant facts or factors.

Consequently, we answer the question of law in favour of the revenue, allow the appeal to the limited extent of error in determining the quantum of disallowance and remit the matter to the Assessing Officer for determining the quantum of disallowance, after granting an adequate opportunity to the Assessee to put forth his pleas regarding the quantum of disallowance.

Parties are directed to appear before the Assessing Officer on 30.03.2015.

(RAJIVE BHALLA)
JUDGE

February 16, 2015 **(AMOL RATTAN SINGH)**
nt **JUDGE**