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

\+ ITA 566/2016, CM APPL.27864-27865/2016

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ITA 569/2016, CM APPL.27867/2016

PR. COMMISSIONER OF INCOME TAX-7 ..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing Counsel with Mr. Sanjay Kumar, Jr. Standing Counsel, in both appeals.

versus

M/S ORIENT CRAFTS LIMITED ..... Respondent

Through: Mr. Salil Aggarwal, Advocate, in both appeals.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **30.09.2016**

1. Two questions of law are urged by the revenue in these two appeals directed against a common order. They are as follows: -

   (i) Whether the deletion of the amounts added under Section 14A by the Assessing officer and partly upheld by the CIT (A) was justified in the circumstances; and

   (ii) Whether the product development charges claimed by the assessee as revenue expenditure were of enduring nature as asserted by the revenue.

2. Though the appeals are delayed by 250 days and no sufficient

explanation is disclosed, yet this Court has considered the submissions.

3. So far as the first question, i.e., the disallowance under Section 14A is concerned, the relevant facts are that the assessee had received dividend income of ₹1,18,076/-. It offered ₹1,72,879/- under Section 14A. The AO proceeded to calculate the disallowance by applying the formula prescribed under Rule 8D of the Income Tax Rules and held that the sum of ₹1,45,72,152/- had to be disallowed. The assessee's appeal was partly accepted; in that the CIT (A) arrived at the figure of ₹18,02,231/- and disallowed that amount under Section 14A. The ITAT, however, rejected that as well and upheld the assessee's contentions with respect to the disallowance offered by it.

4. At the outset it was pointed out that the AO's rejection of the assessee's explanation was premised upon his opinion that no substantiation to the figure was offered. The assessee had relied upon *Joint Investment Pvt. Ltd. v. CIT* (2015) 372 ITR 694 (Del) in which this Court held as follows: -

> *"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing ₹2,97,440/- as a disallowance under Section 14A had to be rejected. Taikisha says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is ₹48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e.,₹52,56,197/-. By no stretch of imagination can*

Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."

5. It is also noticeable that in terms of the previous decision in *Commissioner of Income Tax VI v. Taikisha Engineering India Ltd.,* (ITA 115/2014, decided on 25.11.2014), there has to be express opinion formation before invocation of Rule 8D. Rule 8D is itself premised upon an understanding that not the entire investment but that part of the investment which yields tax exempt income is what ought to be considered as one of the elements. This in accordance with the rule held in *ACB India Ltd., v. ACIT* (374 ITR 108). For these reasons, we see no reason to interfere with the order of the ITAT under Section 14A. The first question is answered accordingly.

6. So far as the issue of product development expenditure is concerned, the assessee had claimed it to be on the revenue's side to the extent of ₹11.87 crores. The AO was of the opinion that the product in question, i.e., samples would result in something of an enduring advantage to the assessee and that it could claim 1/3rd of the expenditure for this year from the balance in the succeeding two years. The CIT (A) allowed the assessee's contention and the ITAT affirmed it. Therefore, it is purely a question of fact which this Court would not interfere with.

7. That apart the Court notices that the product in question developed was connected with the assessee's export business in garments. For the relevant year it had reported total receipts to the tune of ₹686 crores. Given the nature of the article in question, i.e., its seasonal characteristics, this Court is in agreement with the reasoning of the CIT (A) and ITAT. Furthermore, the revenue had been accepting similar expenditure on the revenue side for the previous years.

8. For the forgoing reasons, no substantial question of law arises.

9. The appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 30, 2016

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