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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No. 818/2016

PR. COMMISSIONER OF INCOME

TAX-5, NEW DELHI

..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing
Counsel with Mr. Vikrant A. Maheshwari,
Advocate.

versus

KAMA HOLDING LTD.

..... Respondent

Through: Mr. Satyen Sethi, Advocate with
Mr. Arta Trana Panda, Ms. Gargi Sethee,
Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

16.08.2017

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1. This appeal is filed by the Revenue against an order dated 11th May 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1555/Del/2014 for the Assessment Year ('AY') 2009-10.

2. The question of law urged by the Revenue is whether the ITAT was justified in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT (A)'] deleting the disallowance of the expenditure relatable to the exempt income made by the Assessing Officer ('AO') under Section 14 A of the Income Tax Act, 1961 ('Act') read with Rule 8D of the Income Tax Rules, 1962 ('Rules').

3. The facts, in brief, are that the Assessee is engaged in the business of manufacturing of engineering plastics and fish net twines. In the return of income filed for the AY in question on 30th September 2009, the Assessee showed an income of Rs. 17,96,73,549/-. The return was revised on 31st March 2011, claiming an amount of Rs. 39,41,713/- on account of short deduction and late deposit of TDS. The assessment was completed under Section 143 (3) of the Act making *inter alia* a disallowance of Rs. 6,27,21,000/- under Section 14A of the Act.

4. The Assessee pointed out that, as on 31st March 2005, it had made investments of Rs. 7869.10 lakhs in shares of listed companies and unquoted shares of a subsidiary company. As of that date, the total borrowed funds stood at Rs. 4520.75 lakhs. Thereafter, the Assessee obtained various loans from banks, financial institutions and other companies and the loan rose up to Rs.13072.17 lacs as on 31st March 2008. According to the Assessee, these borrowed loans were utilized for business purposes, viz., for setting up of new plants and factories, expansion of the production capacity and working capital requirement.

5. The categorical stand of the Assessee was that after 31st March 2005, it had not made any fresh investment and definitely not during the AY in question. In the earlier AYs, the loan amount that was relatable to the investments made was determined as Rs. 857.04 lacs. The Assessee had paid interest on this loan amount at an average interest rate of 10.69% p.a. which was worked out to Rs. 91,61,757/-. This was accordingly disallowed for the AY 2006-07 under Section 14A of the Act. The Assessee accordingly

explained that, for this AY, it had likewise disallowed Rs. 87,58,151/- on proportionate basis, considering that there was no fresh investment in shares.

6. The AO, in the assessment order dated 12th December 2011, rejected the disallowance offered by the Assessee and re-calculated it at Rs. 6,06,19,000/- by applying Rule 8D (2) (ii) of the Rules. Before the CIT (A), the Assessee did not question the disallowance made by the AO as far as the administrative expenses were concerned. It was aggrieved by the AO applying Rule 8D (2) (ii) to re-determine the disallowance of the interest component. The CIT(A) agreed with the Assessee and reduced the disallowance of interest to what was in fact offered by the Assessee. The total disallowance, as determined by the CIT (A) under Section 14A worked out to Rs. 1,08,59,701/-. Incidentally, the Assessee has accepted the order of the CIT (A) and did not challenge it further before the ITAT.

7. In the impugned order in the Revenue's appeal, the ITAT referred to the assessment order dated 2nd December 2011, which was passed on the directions of this Court in ITA No. 720/2011, for AY 2006-07 and, held that there was no infirmity in the order of the CIT (A).

8. This Court has heard the submissions of Mr. Asheesh Jain, learned Senior Standing Counsel for the Revenue, and Mr. Satyen Sethi, learned counsel for the Respondent/Assessee.

9. At the outset, the Court notices that for the applicability of Section 14A of the Act read with Rule 8D of the Rules, a pre-requisite is that the AO must, having regard to the accounts of the Assessee, record his dissatisfaction with

the correctness of the claim of expenditure made by the Assessee. If this pre-requisite is not satisfied, the question of proceeding to the next stage of applying the formula under Rule 8D (2) (ii) of the Rules does not arise.

10. In this context, if one peruses the order of the AO, it is seen that there is simply a recording that the contention of the Assessee that the investments were made in shares out of its own funds and that the said funds were merged with borrowed funds was not accepted. There is no specific recording by the AO, with reference to the accounts of the Assessee, that he is not satisfied with the correctness of the claim of expenditure made by the Assessee. It is seen that before the AO, the Assessee had placed reliance on the decision of this Court in *Maxopp Investment Ltd. v. Commissioner of Income Tax* [2012] 347 ITR 272 (Del). Yet, the AO did not consider it necessary to fulfil the mandatory requirement of Section 14A (2) of the Act and Rule 8D (1) (a) of the Rules and straightaway provided to re-determine the disallowance of the interest expenditure in terms of Rule 8D(2)(ii) of the Rules. Had the AO examined the accounts, he would have realized that, there being no fresh investment during the AY in question, the disallowance offered by the Assessee on the basis of the investment already made in the previous year could not have been disregarded.

11. In the considered view of the Court, the impugned order of the CIT (A) which limits the disallowance to the figure above-mentioned cannot be stated to be erroneous. The ITAT was therefore right in not interfering with it, though for different reasons.

12. No substantial question of law arises for consideration. The appeal is accordingly dismissed with no order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 16, 2017
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