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

+ ITA 1093/2017

PR.COMMISSIONER OF INCOME TAX-6 Appellant
Through: Mr. Sanjay Kumar, Jr. Standing Counsel.

versus

NET 4 INDIA LTD. Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

01.12.2017

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1. The Revenue's grievance is with respect to the impugned order of the ITAT which had directed the remand to the Assessing Officer for working out the proper disallowance under Section 14A by applying the Rule 8D (2) (iii) of the Income Tax Rules.

2. The assessee had declared *inter alia* tax exempt income - earned by way of dividend - to the tune of ₹37,40,000/- for AY 2008-09. It urged that the dividend was earned upon an investment made by the assessee to the extent of ₹20.02 crores made in Net 4 Communication Ltd. during AY 2007-08. Apparently the assessee had initially borrowed some amounts from the banks for its business activities for in AY 2007-08 which was increased to a total extent of ₹14.11 crores during AY 2007-08. Unsecured loans had again

increased from ₹63.87 lakhs in 2006-07 to ₹2.30 crores in AY 2007-08. The assessee's contention was that investment was made which ultimately yielded the exempt income from its non interest bearing fund such as share capital and reserves. The addition initially made by the AO was to the tune of ₹76,57,887/-. This was confirmed by the CIT (A).

3. The ITAT in its impugned order reasoned as follows: -

“11. It is an admitted position that for the year under consideration, assessee has not made any fresh investments. However, assessee has earned tax free income at Rs.37.40 lacs. On perusal of balance sheet and Profit and Loss Accounts, it appears that these investments have been carried forwarded from previous years. Further, on perusal of balance sheet, it appears that assessee had sufficient interest free funds for such investments in the past and no borrowed funds have been utilized. Assessee has also not made any suo motu disallowance u/s 14A of the Act read with rule 8D. Further, for the year under consideration, if at all any disallowance needs to be calculated, it must be in accordance with Rule 8D of the Act. From the computation of assessment order, ld. AO has ruled out applicability of sub clause (i) of Rule 8D (2). He has calculated the disallowance under Rule 8D (2) (ii) & (iii).

12. Ld. AR argued that disallowance under section 14A read with Rule 8D, cannot be applied to strategic investments in the sister concerns. It has been submitted that assessee had made investment in the sister concern which has yielded dividend income. However, it is observed that assessee has not been able to substantiate the need for such strategic investment and therefore, we reject this argument.

13. In our considered opinion sub clause (ii) also won't be applicable as there cannot be any indirect interest expenditure or any other interest income that could be attributed to earning of exempt income. Therefore, the disallowance under section 14A has to be calculated as per the provisions of rule 8D (2) (iii) of the rules applying the tax free income actually earned during the year.

14. We accordingly set aside this issue to Ld. AO to calculate the disallowance under section 14A by applying provisions of rule 8D (2) (iii)."

4. The Revenue urged that the ITAT's findings with respect to nexus of the borrowing with the income earned cannot be sustained. The ITAT, in our opinion, correctly inferred that there cannot be any indirect interest expenditure or interest income attributable to the exempt income in the circumstances of this case. Its directions to calculate the disallowance in terms of Rules 8D (2) (iii) in the circumstances cannot be faulted.

5. No substantial question of law arises; the appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

DECEMBER 01, 2017

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