$~2

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

\+ ITA 268/2018

THE PR. COMMISSIONER OF INCOME TAX -4..... Appellant
Through: Mr. Ruchir Bhatia, Senior Standing Counsel

versus

M/S HINDUSTAN CLEAN ENERGY LTD. ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **05.07.2018**

This appeal under Section 260A of the Income Tax Act, 1961 ('Act' for short) preferred by the Revenue impugns order of the ITAT dated 31.8.2017 passed in ITA No.5569/Del/2005 in the case of M/s Hindustan Clean Energy Ltd., and relates to assessment year 2011-2012.

Question raised pertains to disallowance of expenditure of Rs.99,09,017/- made by the Assessing Officer under Section 14A of the Income Tax Act, 1961 by invoking Rule 8D of the Income Tax Rules, 1962.

Question is covered by the decision of the Supreme Court in the case of ***Godrej & Boyce Manufacturing Company v. DCIT,*** **2017(394) ITR 449(SC)**, wherein, with reference to applicability Rule 8D, it was observed and held :-

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act <u>in a situation where the Assessing Officer is not satisfied with the claim of the Assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the Assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the Assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.</u>"

(emphasis supplied)

In the present case, however, the Assessing Officer ('AO') without recording required satisfaction on "having regard to the accounts of the Assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the Assessee", had invoked and applied Rule 8D as a mandatory provision applicable in all cases of exempt income. Action of the AO was contrary to law and, therefore, there is no merit in the present appeal.

We would, however, clarify that we have not affirmed and accepted the view expressed by the Commissioner of Income Tax (Appeals) that provisions of Section 14A and Rule 8D cannot be invoked in case the assesesee was an investment company, or the shares were procured for the purpose of the strategic investments, in view of the decision of the Supreme Court in ***Maxopp Investment Ltd. v. Commissioner of Income Tax,*** **[2018] 402 ITR 640(SC)**.

Recording the aforesaid, the appeal is dismissed *in limine*, without notice being issued.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JULY 05, 2018
tp