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

+ ITA 119/2009

COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sanjeev Sabharwal, Adv.

versus

D.C.M. Ltd. Respondent
Through Mr. Santosh Kumar Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **05.07.2018**

Present appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 ('Act' for Short) in the case of DCM Limited arises from the order dated 31.03.2008 passed by the Income Tax Appellate Tribunal in ITA Nos. 2092/Delhi/2005 and 2111/Delhi/2005 and relates to assessment year 2000-01.

Appeal was admitted on following substantial question of law:-

“Whether the ITAT was correct in law in deleting addition of Rs.8,16,512/- made by the Assessing Officer by disallowing expenses incurred determined at the rate of 20% of the dividend income earned by the company under Section 14A of the Income Tax Act, 1961?”

As the assessment year involved is 2000-01, Rule 8D of the Income Tax Rules, 1962 would not be applicable.

Assessment order on the issue in question states that the assessee had earned income Rs. 40,82,586/- which was exempted under Section 10 (33) of the Act. However they had not furnished details of expenditure disallowed under Section 14A of the Act. Assessee had submitted and claimed that no expenditure was incurred during the year under consideration directly relatable to earning of this dividend income.

Assessing Officer attributed 20% of the total dividend income as expenditure relating to dividend income and accordingly disallowance of Rs.8,16,512/- was made.

Commissioner of Income Tax (Appeals) affirmed the said finding and disallowance observing that the amount or quantum of disallowance was justified as it was less than 0.2% of the total investment of Rs.53.76 crores made by the assessee.

Tribunal, however, accepted contention of the respondent/assessee and has deleted the disallowance, observing that expenses attributable to earning of dividend income were not demarkable and could not be connected to the dividend income. Assessing Officer was not justified in making disallowance of Rs.8,16,512/- from the expenditure incurred without specifically pointing out the expenditure attributable and relatable to the exempted income.

We have reservation to the said reasoning and findings of the Tribunal. At the same time, it is apparent that the Assessing Officer and Commissioner of Income Tax (Appeals) have not proceeded on a rational and sound basis, to quantify disallowance under Section 14A of the Act. Quantum of investment quoted by the Commissioner of Income Tax (Appeals) includes investment in bonds, interest income from which was

taxable.

The assessee would have engaged services and incurred direct and indirect expenses. Difficulty in exact and precise qualification and attribution would not justify deletion of the entire disallowance, as if no expenditure was incurred. Reasonable and fair disallowance could have been made after examining and referring to relevant particulars and details.

In these circumstances, we would have remanded the issue of quantum of disallowance to the Tribunal or the Assessing Officer for the fresh decision. However, keeping in view the quantum of disallowance and that on setting off brought forward losses, income was assessed NIL, we are not inclined to remand the case.

Accordingly, the substantial question of law is partly answered in favour of the Revenue but we are not passing any order of remit. Order of the Tribunal deleting the addition/disallowance made by the Assessing Officer would consequently remain effective and operate. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JULY 05, 2018

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