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

+ **ITA No.1418/2018**

PR. COMMISSIONER OF INCOME TAX- 6 Appellant

Through: **Mr.Zoheb Hossain, Sr. St. Counsel**

versus

M/S MOHAN EXPORTS (INDIA) PVT. LTD..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **11.12.2018**

CM APP No.51909/2018

For the reasons stated in the application, the delay of 61 days in re-filing the appeal is condoned. The application is allowed.

ITA No.1418/2018

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (for short 'the Act') in the case of M/s. Mohan Exports (India) Pvt. Ltd. relates to the assessment year 2012-13 and arises from the order of the Income Tax Appellate Tribunal dated 05.04.2018.

Issue raised relates to disallowance under Section 14A of the Act. The Assessing Officer in the present case for computing disallowance under Section 14A of the Act, had recorded the following reasons and grounds:-

“During the assessment proceedings, it was noted that the assessee has earned the dividend income. The assessee was asked to submit calculation as per rule 8D for making disallowance u/s-14A through questionnaire issued along with the notice u/s 14A without making any calculation as per Rule 8D”.

Thereafter the Assessing Officer by simply applying Rule 8D of the Income Tax Rules 1962 had disallowed expenditure of Rs.1,61,86,545/-.

The assessment order is bereft of details of exempt income and self-disallowance, if any. It records that the respondent-assessee was engaged in the business of trading, consultancy and projects (exports).

During the course of hearing, learned counsel for the Revenue has handed over letter dated 15.11.2018 written by Assistant Commissioner of Income Tax Circle 17(1) stating that the respondent-assessee had earned exempt dividend income of Rs.1,98,46,777/- during the year and had made *suo moto* addition of Rs.36,60,232/- in the computation of income as disallowance under Section 14A of the Act.

The Commissioner of Income Tax (Appeals) held that the Assessing Officer had failed to record his satisfaction before embarking and invoking Rule 8D of the Rules. Disallowance under Section 14A can be made of expenditure relatable to the exempt income and not taxable income. The Commissioner of Income Tax (Appeals) had thereafter referred to the submissions of the assessee that the investment in shares was made in the earlier years out from the assessee's own funds. The investments were not relatable to the funds or loan made available by the bank. After referring to the facts on record, he held that disallowance made by the assessee was justified and satisfactory.

Aforesaid findings have been affirmed by the Tribunal in the impugned order.

Rule 8D cannot be invoked and applied without the Assessing Officer recording his dissatisfaction on the disallowance or no disallowance made by the assessee and the submissions of the assessee in this regard. Rule 8D in the nature of best judgment determination, cannot be invoked without the Assessing Officer first recording his dissatisfaction on the disallowance, if any, made by the assessee and examination and rejection of the justification given by the assessee. Rule 8D is not mandatory for the assessee to follow. An assessee is entitled to make just and fair disallowance, or even justify why no disallowance is required. Only when

the explanation of the assessee is rejected that the Assessing Officer by way of best judgment determination can compute the disallowance by applying Rule 8D of the Rules. The issue raised in the present case is covered against the Revenue vide judgment of the Supreme Court in **Godrej & Boyce Manufacturing Co. Ltd. vs. DCIT (2017) 394 ITR 449 (SC)** wherein it has been held as under:-

“Sub-Sections (2) and (3) of Section 14-A of the Act read with Rule 8-D 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 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 formula prescribed under Rule 8-D 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 14-A(2) and (3) read with Rule 8-D of the Rules or a best judgment determination, as earlier prevailing, would become applicable”.

We find that no substantial question of law arises for consideration in the present appeal. The appeal is dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 11, 2018

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