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

\+ ITA 1017/2018

DEEPAK PAHWA ..... Appellant

Through Ms. Shashi M. Kapila, Mr. Pravesh Sharma, Mr. Sushil Kumar and Mr. Siddarth Kapila, Advocates.

versus

DY. DIRECTOR OF INCOME TAX & ORS. ..... Respondent

Through Mr. Zoheb Hossain, Sr. Standing Counsel.

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

O R D E R

% **17.09.2018**

C.M. No.38152/2018

Exemption allowed, subject to all just exceptions.

ITA 1017/2018

This appeal by, Deepak Pahwa ('appellant-assessee' for short) arises from the order dated 14th May, 2018 of the Income Tax Appellant Tribunal ('Tribunal' for short), and relates to the Assessment Year 2004-05.

2. Contention of the appellant-assessee that dividend income is not "exempt" income for the purpose of disallowance under Section 14A of the Income Tax Act, 1961 is a stale issue, which has already been answered in several cases including ***Godrej and Boyce***

Manufacturing Company Ltd. versus Deputy Commissioner of Income Tax, Mumbai and Another, (2017) 7 SCC 421 and in Civil Appeal Nos. 104-109 of 2015, ***Maxopp Investment Ltd. versus Commissioner of Income Tax*** decided on 12th February, 2018. This argument has to be rejected.

3. On the question of disallowance, grievance of the appellant-assessee is that the Tribunal has made observations on merits and has held that even branch office expenditure can be disallowed.

4. This submission by the appellant is contrary to record and direction given by the Tribunal. Paragraph 8 of the impugned order passed by the Tribunal dated 14th May, 2018 reads as under:-

> "8. The Ld CIT(A) had also considered the manpower cost in addition to the above expenditure noted in the table. In the above table, the assessee has allocated the expenditure incurred at the Head officer and its branches which has been doubted by the lower authorities . The Assessee has created the Branch offices for business promotion and to facilitate the customers , expenditure incurred thereon has no connection with the Head Office . Therefore in our considered opinion and relying on the case law cited by the assessee in the case of Maxopp (Supra), we are of the opinion that the Expenditure incurred only at Head office , which may have direct or indirect relationship for earning the exempt income should be considered for disallowance under section 14A of the Act. We, therefore think it fit in the interest of justice that the matter should go back to the Assessing officer for fresh calculation of disallowance (sic) u/s 14A after considering the expenditure (sic) incurred at Head office and the manpower cost incurred by the assessee at the Head office only. The Assessee is directed to allocate the manpower cost incurred at the

> head office and Branch office and staff welfare cost has already been considered in the above table. Needless to say, the Assessee shall be given reasonable (sic) opportunity of being heard."

5. The Tribunal has not directed that branch office expenditure should be taken into consideration, for the case of the appellant-assessee was that the branch offices were for business promotion and to facilitate the customers. This submission of the respondent-assessee has been accepted. Tribunal has directed that only expenditure incurred at the head office would be taken into consideration.

6. During the course of hearing, on a question being put, learned counsel for the appellant-assessee has accepted that no self disallowance under Section 14A was made, though the appellant-assessee had earned dividend income of Rs.2,85,43,064/-.

7. Appellant-assessee had also submitted that in the first round of litigation, the Assessing Officer had made a disallowance of expenditure of Rs.96,34,400/-, which was enhanced by the Commissioner of Income Tax (Appeals) to Rs.2,01,30,602/-. These disallowances are totally irrelevant for our decision in this appeal, as the Tribunal has set aside the said additions and made an order of remand.

8. We would clarify that the Assessing Officer while examining the question of disallowance under Section 14A would take into consideration all contentions and pleas of the appellant-assessee. Both the Assessing Officer and the appellant-assessee are bound by the ratio in ***Godrej and Boyce Manufacturing Company Ltd.*** (Supra) and

Maxopp Investment Ltd.(Supra)

9. Recording the aforesaid, we do not find any good ground or reason to frame any substantial question of law in the present appeal and the same is dismissed. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

SEPTEMBER 17, 2018
NA /VKR