

\$~72 and 4.

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

+ **INCOME TAX APPEAL Nos. 1234/2018 and 1179/2018**

Date of decision: 2nd November, 2018

THE PR. COMMISSIONER OF INCOME TAX-5 Appellant
Through: Mr. Ruchir Bhatia, Advocate.

versus

JAGSON INTERNATIONAL LTD Respondent
Through: Mr. Shashwat Bajpai, Mr. Rajiv Saxena,
Mr. Shard Agarwal and Mr. Ajit Ku. Jha,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL):

CM No. 46156/2018 in ITA No. 1234/2018

CM No. 45400/2018 in ITA No. 1179/2018

Exemption allowed subject to all just exceptions.

INCOME TAX APPEAL Nos. 1234/2018 and 1179/2018

These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 in the case of Jagson International Limited relate to the Assessment Years 2009-10 and 2010-11 and arise from the common order of the Tribunal dated 11th May, 2018.

2. The first issue raised by the Revenue; is whether a drilling rig is a qualifying ship within the meaning of Section 115VD of the Act. This issue is covered against the Revenue by decision of the Delhi High Court dated 8th

November, 2012 in ITA 1395/2010, *The Commissioner of Income Tax, New Delhi versus Jagson International Limited*.

3. Appeal against the said decision is pending before the Supreme Court as Special Leave Petition has been admitted on leave being granted. Counsel for the parties submit that ruling of the Supreme Court would equally apply to the present appeal. We take the statement on record. The first issue would be treated as disposed of in terms of the said statement. In case of any difficulty, it will be open to the parties to file an application in this appeal after the decision of the Supreme Court.

4. The above order in respect of the first issue would be in consonance with and in terms of the earlier order dated 26th October, 2018 passed in ITA No.1165/2018 in the case of the respondent-assessee. This order in fact follows the earlier orders of this court passed in several other ITAs.

5. The second issue in these appeals relates to disallowance of Rs. 15,12,468/- and Rs.13,83,209/- made by the Assessing Officer in the two years under Section 14A of the Act by applying Rule 8D of the Income Tax Rule, 1962. Reading of the Assessment Order for the Assessment Year 2009-10 would show that Rule 8D was invoked as if the Rule is mandatory. Assessment Order for the Assessment Year 2009-10 records that the assessee had earned exempt income of Rs. 2,94,299/- in the form of dividend income and had disallowed an amount of Rs.10,520/- under Section 14A of the Act. The Assessing Officer did not examine the issue/question whether the disallowance made by the respondent-assessee was justified or not. In the Assessment Order for the Assessment Year, 2010-11, again there is hardly or no discussion on the said aspect except

reference to Rule 8D, as if the Rule is compulsory and mandatory for computing disallowance under Section 14A of the Act.

6. The aforesaid reasoning of the assessing officer cannot be sustained as the Supreme Court in *Godrej Boyce Manufacturing Company Limited versus Deputy Commissioner of Income Tax Mumbai & Anr.*, (2017) 7 SCC 421 after referring to Section 14A has held that Rule 8D is in the nature of best judgment determination as it prescribes a formula for determination of the expenditure incurred in relation to income that 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. The jurisdictional requirement for invoking Rule 8D is recording of satisfaction by the assessing officer that having regard to the accounts of the assessee placed before him, it is not possible to generate requisite satisfaction with regard to the correctness of the claim of the assessee. It is only then that the provisions of Sub-section 2 and 3 to Section 14A read with Rule 8D of the Rules or best judgment determination can be applied. This statutory mandate is not satisfied in the present case.

7. In the aforesaid circumstances, we are not inclined to issue notice in the present appeals on the second aspect. The appeals are accordingly disposed of, without any order as to costs.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 02, 2018

MR/ssn/VKR