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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

***WRIT PETITION NO. 3100 OF 2019
and
WRIT PETITION NO. 3109 OF 2019***

Pr. Commissioner of Income Tax-14 ... Petitioner

V/s.

Godrej Investment Ltd. ... Respondent

Mr. Suresh Kumar for the Petitioner

Mr. Atul Jasani for the Respondent

***CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.***

DATE : 26 NOVEMBER 2019.

P.C. :-

These two Petitions under Article 226 of the Constitution of India challenge a common order dated 29 March 2019 passed by the Income Tax Appellate Tribunal (Tribunal) under Section 254(2) of the Income Tax Act, 1961 (Act). The common impugned order dated 29 March 2019 rejected the Petitioner's

application for rectification of an order dated 9 July 2018 passed under Section 254(1) of the Act relating to Assessment Years 2008-09 and 2009-10.

2. The Tribunal by its order dated 9 July 2018 upheld the view of the Commissioner (Appeals) that the Assessing Officer had not recorded his dissatisfaction with the suo motu disallowance made under Section 14A of the Act by the Petitioner before invoking Rule 8D of the Income Tax Rules (Rules). The Tribunal in its aforesaid order relied upon the decision of the Supreme Court in *Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640* that in the absence of the Assessing Officer recording that the suo motu disallowance is not correct, the provisions of Rule 8D cannot be invoked/applied.

3. The Petitioner filed a rectification applications on 22 January 2019 for both the Assessment Years with regard to the order dated 9 July 2018 urging that the Tribunal failed to note that Assessing Officer had recorded his dissatisfaction while rejecting the suo motu disallowance under Section 14A of the Act r/w. 8D of the Rules.

4. The Tribunal by the impugned order dated 29 March 2019 dismissed the Revenue's rectification application by pointing out that in its order dated 9 July 2018 it had come to the conclusion on perusal of the assessment order that the Assessing Officer has not

recorded his dissatisfaction to the assessee's suo motu disallowance under Section 14A of the Act. Therefore, it held Rule 8D of the Rules could not be invoked. Thus, dismissed the Petitioner's application for rectification for both the Assessment Years as there was no error apparent on record calling for rectification.

5. Mr. Suresh Kumar, learned Counsel appearing for the Revenue submits that according to the Revenue the Assessing Officer had recorded his dissatisfaction with the suo motu disallowance made under Section 14A of the Act. This before invoking Rule 8D of the Rules. It was in the above view, the Tribunal has been moved so as to correct the order dated 9 July 2018 to the above extent.

6. We find that the order dated 9 July 2018 had dealt with the Petitioner's contentions extensively while upholding the order of the Commissioner of Income Tax(Appeals). The view taken by the Tribunal in its order dated 9 July 2018 in both the Assessment Years was on the basis of the record available before it and its understanding/appreciation of the evidence on record for the two Assessment Years. This is not a case of an error apparent on record which would warrant interference. In case the parties are aggrieved by order dated 9 July 2018, it is open to the parties to file an appeal under the Act. The allowing of such an application for rectification by the Tribunal

would amount to review of the order dated 9 July 2018. This is impermissible as the Tribunal is not bestowed with powers to review its order.

7. In the above circumstances, we find no reason to interfere with the impugned order dated 29 March 2019 of the Tribunal for the two Assessment Years under consideration.

8. Needless to state that it would be open to the Petitioner to urge this issue in case they have filed an appeal or seek to file an appeal from the order dated 9 July 2018.

9. Both the Petitions are dismissed.

NITIN JAMDAR, J.

M.S. SANKLECHA, J.