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

+ **ITA 260/2019**

PR. COMMISSIONER OF INCOME TAX – 6 Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

MIS MODI RUBBER LTD. Respondent

Through: Mr. Rohit Jain, Advocate with Mr.
Aniket D. Agrawal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **02.09.2019**

1. Revenue has preferred the present appeal against the order dated 15.04.2018 in ITA No. 1952/Del/2014 in respect of assessment year 2009-10.
2. The Tribunal has concluded that the decision of the learned CIT (A) that the dissatisfaction of the learned AO was not discernible while invoking Section 14 A of the Income Tax Act and needs a re-look in light of the decision of this Court in *India Bulls Financial Services Private Limited v. Deputy Commissioner of Income Tax 2017 395 ITR 242 (Delhi)*. The operative part of the impugned order reads as follows:-

5.7 In view of the above decision of the Hon'ble Delhi High Court, we are of the opinion that in the instant case, the decision of the learned CIT(A) that dissatisfaction of the learned AO is

not discernible, need a re-look and thus the issue needs to be re-examined by the learned CIT(A) and accordingly, we restore the issue to the file of the Ld. CIT(A) for deciding afresh in view of the decision of the Hon'ble High Court in the case of India Bulls Financial Services Pvt. Ltd. (supra). The Ld. CIT(A), first may adjudicate the issue of requirement of satisfaction as to incorrectness of the claim of the assessee of having incurred no expenses towards exempt income. If he finds that the prerequisite of satisfaction is cleared, then he may decide qualification of disallowance under three parts of Rule 8D(2) in accordance with law. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The ground of appeal of the Revenue is accordingly allowed for statistical purposes.

3. Learned counsel for the Respondent submits that the Supreme Court had an occasion to examine Section 14 A of the Act in ***Godrej & Boyce Manufacturing Co. Ltd v. Deputy Commissioner of Income Tax & Anr, [2017] 394 ITR 449 (SC)***. The relevant paras read under as:-

“37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D 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 the formula prescribed under Rule 8D 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 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.

38. In the present case, we do not find any mention of the reasons which had prevailed upon the Assessing Officer, while dealing with the Assessment Year 2002-2003, to hold that the claims of the Assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the Assessing Officer, particularly, in the absence of any new fact or change of circumstances. Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds available (Rs. 270.51 crores as on 1.4.2001 and Rs. 280.64 crores as on 31.3.2002) remains unproved by any material whatsoever. While it is true that the principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this Court in *Radhasoami Satsang vs. Commissioner of Income-Tax*[6].

“We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”

4. In our view, there is no justification for filing of the present appeal since, all that the ITAT has done is to remand the matter back to the CIT (Appeals) to have a re-look on the aspect whether the dissatisfaction of the learned AO is discernible from its order or not terms of Section 14 A of

the Act.

5. We dispose of the present appeal with a direction to the learned CIT (Appeals), to examine the issues in terms of the order passed by the ITAT while taking into consideration the law as laid down in ***India Bulls Financial Services Private Limited*** (supra) and ***Godrej & Boyce Manufacturing Co. Ltd*** (supra) and such other decisions as may be relevant in law.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 02, 2019/ss