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

\+   ITA 109/2019

THE PR. COMMISSIONER OF INCOME TAX-5 ..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Std.Counsel with Ms.Vibhuti Malhotra, Advocate

versus

JAGSON INTERNATIONAL LTD. ..... Respondent

Through: Dr.Shashwat Bajpai, Mr.Rajiv Saxena & Mr.Sharad Agarwal, Advocates

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **04.02.2019**

1. The Revenue urges three questions of law for consideration by this Court. Firstly, relating to tax exempt income under Section 14A; secondly, applicability of the tonnage tax exemption by virtue of Section 115VD of the Income Tax Act; and thirdly, disallowance of expenditure made by the Assessing Officer in the context of the assessee's claim for the adjustment of the previous expenditure.

2. The CIT(A) and the ITAT, which concurred with the assesse's point of view, both affirmed that in the given year tax exempt income was not earned and consequently the decision of this Court in *Cheminvest vs. ITO* (2009) 317 ITR (AT) 86 was applicable. As far as issue of exemption under Section 115VD is concerned, the lower tax appellate authorities relied upon *Commissioner of Income Tax New Delhi vs. Jaggon International Ltd.* [ITA 1395/2010], decided on 08.11.2012, by this Court, in which the assessee which is also the assessee in that case, was held entitled to the benefit.

3. On the third issue, the CIT(A) found as follows:

"5.5 I have gone through the assessment order and perused the material available on record. I find that similar issue arose in AY 2008-09 dealt by my predecessor and also by me in AY 2009-10 in appeal no. 400/2011-12 and in AY 2010-11 in appeal no. 02/2013-14. The issue that assessee is entitled for tonnage tax benefit has already been decided in its favour by Hon'ble Delhi High Court in ITA Nos. 1395/D/2010. Thus any disallowance made u/s 14 A or otherwise as previous year adjustment would ultimately enhance the business profit from shipping unit which are exempt u/s 115 VF and MAT is not applicable to tonnage tax companies as per 115 VO. Thus ground no. 2 & 6 are allowed by accepting the alternative plea raised in ground no. 10. The AO is directed to recomputed the income after making the disallowance by enhancing the shipping income which would be exempt u/s 115 VF under tonnage tax scheme as held by the Hon'ble Delhi High Court in assessee's own case for AY 2006-07 & 2007-08, by my predecessor and me in subsequent years."

4. This Court is of the opinion that since the issue urged relates to factual matters which resulted in tax neutrality the question is moot as far as the present year is concerned. At the same time it is clarified that in the event in any given future year, the assessee's income which is not exempted under Section 115VD, the decision of the lower Revenue Authorities as indeed the assessment orders for all years under Section 115VD, are applicable and no other income as reported shall not be deemed conclusive.

5. In view of the above observations, no substantial question of law arises.

6. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 04, 2019/*'hkaur'*