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

\+ **ITA 230/2019**

THE PR. COMMISSIONER OF INCOME TAX - 4 ..... Appellant

Through: Mr. Raghvendra Singh, Sr. Standing Counsel with Mr. Vipul Agrawal, Advocate.

versus

H.T. MEDIA LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 26.08.2019

1. This is an appeal filed by the Revenue against the order dated 5th September 2018, passed by the Income Tax Appellate Tribunal (ITAT) under the Income Tax Appeal No. 6394/DEL/2013 (A.Y. 2009-10).

2. At the outset, Mr. Raghvendra Singh, learned Senior Standing Counsel for the Appellant very fairly states that the issues/questions framed in the present appeals are covered by the decision of this Court in ***H.T. Media Ltd. v. Principal Commissioner of Income Tax-IV*** (2017) 399 ITR 576 (Delhi). The questions of law framed in the said appeal were as follows:

> " While admitting ITA No. 548 of 2015 on 15th October 2015, the following question was framed for consideration:

Whether the ITAT erred in remitting the matter concerning the deletion of disallowance of interest under clause (ii) of Rule 8 D (2) of the Income Tax Rules, 1962 to the Assessing Officer for a fresh determination in light of the decision of this Court in CIT v. Taikisha Engineering India Ltd. (2015) 370 ITR 338 (Del)?"

While admitting ITA No. 549 of 2015 on 15th October 2015, the following question was framed for consideration:

"Whether the Assessing Officer recorded a proper satisfaction in terms of Section 14A(2) and Rule 8 (D) of the Income Tax Rules, 1962 and, in calculating the disallowance at 0.5% of average value of investments as per clause (iii) of Rule 8 D (2) of the Income Tax Rules, 1962?"

3. The findings returned by this Court in the said decision read as follows:

"37. In the considered view of this Court, the above observations of the AO in the assessment order are of a broad general nature not with particular reference to the facts of the case on hand.

38. The Court is also unable to agree with Mr. Singh that on this aspect there are concurrent findings of both the CIT (A) as well as the ITAT. The CIT (A) disallowed the exempt expenses by merely repeating what the AO had stated about the cost that is built into so called 'passive' investments and simply recorded that the AO was bound to Rule 8D and, therefore, was justified in determining administrative costs at 0.5%. Here again, the CIT (A) failed to note that without the mandatory requirement, under Section 14A of the Act and Rule 8D of the Rules, of satisfaction being recorded being met, the question of applying Rule 8D (1) did not arise.

39. Turning now to the order of the ITAT, in para 33, it recorded the submission of the AR that the AO did not record

any satisfaction about the Assessee not properly offering expenditure incurred in relation to the exempt income at Rs. 3 lakhs. The ITAT reproduced the contents of para 3.3.1 of the assessment order, which has been extracted by this Court hereinbefore, which contains general observations regarding earning of exempt income. This cannot be accepted as a recording by the AO of satisfaction regarding the claim of the Assessee after examining its accounts. Again, in para 34 of its order, the ITAT simply reproduced para 3.3.6 of the assessment order where, again, no reasons have been provided but only a conclusion has been reached that the AO was "satisfied that the Assessee had incurred expenses to manage its investments which may yield exempt income, and Assessee grossly failed to calculate such expenses in a reasonable manner to ascertain the true and correct picture of its income and expenses."

40. Consequently on the aspect of administrative expenses being disallowed, since there was a failure by the AO to comply with the mandatory requirement of Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules and record his satisfaction as required thereunder, the question of applying Rule 8D (2) (iii) of the Rules did not arise. The question framed in ITA 549 of 2015 is answered accordingly."

4. In view of the submission made by learned Counsel for the Appellant, the appeal is accordingly dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

AUGUST 26, 2019

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