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

\+ ITA 172/2020

PR. COMMISSIONER OF INCOME TAX LTU, NEW DELHI
..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel with Ms. Adeeba Mujahid, Advocate.

versus

THE ORIENTAL INSURANCE CO. LTD ..... Respondent

Through: Mr. Mayank Nagi and Mr. Pulkit Verma, Advocates.

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

O R D E R

% **04.03.2020**

C.M. No. 8429/2020 (delay)

1. By this application, the applicant seeks condonation of delay of 175 days in re-filing the application. For the reasons stated in the application, the delay is condoned.

2. The application stands disposed of in the aforesaid terms.

C.M. No. 8428/2020 (delay)

3. Issue notice. Learned counsel for the Respondent accepts notice.

4. By this application, the Appellant seeks condonation of delay 24 days in filing the appeal. Considering the extent of delay, counsel for the Respondent fairly does not oppose the application. The same is allowed and the delay is condoned.

5. The application stands disposed of in the aforesaid terms.

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6. The Revenue has preferred the present appeal to assail the order dated 25.02.2019 passed by the Income Tax Appellate Tribunal (ITAT), Delhi Bench 'C', New Delhi in ITA No. 485/Del/2016 preferred by the Revenue in respect of the assessment year 2011-12. The Tribunal has dismissed the said appeal by placing reliance on its earlier order in relation to Respondent-assessee for assessment year 2005-06 which in turn placed reliance on the earlier orders of the Tribunal in relation to the same assessee for the assessment year 2000-01 and 2001-02.

7. The submission of Mr. Ajit Sharma, learned Senior Standing Counsel for the Appellant is that the applicability of Section 14A of the Income Tax Act, 1961 does not stand excluded upon reading of Section 44 read with the first schedule of the Act. He submits that the object of Section 14A is to prevent a double benefit being claimed by the assessee, by claiming deduction of expenditure incurred in deriving income which does not constitute part of the total income i.e. the taxable income.

8. He further submits that in any event, if in view of the tribunal, Section

14A was not attracted, the Tribunal should have at least remanded the matter back to the Assessing Officer to ensure that the computation of income had been done in terms of the first schedule of the Act in relation to the Respondent-assessee, who is carrying on a business of insurance other than life insurance.

9. We have heard learned counsels and are of the view that no substantial question of law arises for our consideration. The Tribunal has interpreted Section 44 read with the first schedule and concluded that applicability of Section 14A is excluded in relation to computation of income of an insurance company. We have examined the relevant provisions. Section 44 begins with a non-obstante clause and overrides the other provisions of the Act as mentioned therein including Section 14A. We are not convinced with the submission of Mr. Ajit Sharma that Section 14A would be applicable in respect of the Respondent. Section 14A does not have independent legs to stand on. Section 14A *inter alia* begins with the words "*for the purposes of computing the <u>total income under this chapter</u>, no deduction shall be allowed in respect of expenditure incurred................*". The chapter in question is chapter IV. This chapter also contains the provisions relating to computation of profits and gains of business or profession. Section 44 specifically excludes the provisions of the Act relating to computation of income, *inter alia,* those contained in "Section 28 to 43B". Thus, the exclusion would take within its sweep Section 14A which is an exemption for deductions as allowable under the Act, as provided under Section 28 to 43B. Further, Section 44 is a special provision applicable in the cases of insurance companies and applies, notwithstanding anything to the contrary

contained in the provisions of the Income Tax Act relating to the computation of income chargeable under different heads. For computing the profits and gains of the business of insurance company, the AO had to resort to Section 44 and the prescribed rules, and could not have applied Section 28 to 43B, since the same were excluded from the purview of Section 44. This necessarily includes the exception provision enshrined under Section 14A of the Act. Therefore, in our view, the AO could not have travelled beyond Section 44 in the first schedule of the Act. Besides, the tribunal has also invoked the rule of consistency since the same view of the Tribunal has prevailed in respect of the earlier assessment years i.e. 2000-01, 2001-02 and 2005-06.

10. We also do not find merit in the submission of Mr. Sharma that the Tribunal should have remanded back the matter to the Assessing Officer for computation of income of the Respondent-assessee in terms of first schedule of the Act, since that was not even a ground urged by the Revenue before the Tribunal. At this stage, it is too late in the day for the Revenue to argue that notwithstanding the grounds urged to challenge the order of the CIT (A), the Tribunal should have ventured into examining the merits of the computation of income of the Respondent assessee in terms of Section 44 read with the first schedule of the Act. No doubt, the Tribunal is a final fact-finding body. However, when the Revenue confined its challenge only in respect of the applicability of Section 14A, we cannot find fault in the impugned order, on the basis of submissions not advanced before the Tribunal. We, therefore do not find any substantial question of law arising in relation to the view taken by the Tribunal.

11. Accordingly, the present petition is disposed of.

VIPIN SANGHI, J

SANJEEV NARULA, J

MARCH 04, 2020
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