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

+ **ITA 598/2019**

THE PR. COMMISSIONER OF INCOME TAX -7

..... Appellant
Through: Mr.Ruchir Bhatia, Sr.SC with
Ms.Deeksha Gupta, Adv.

versus

RELIGARE ENTERPRISES LTD. Respondent

Through: Ms.Kavita Jha, Mr.Vaibhav
Kulkarni and Mr.Udit Naresh,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER
08.05.2024

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1. The appellant impugns the order of the Income Tax Appellate Tribunal ["ITAT"] dated 10 January 2019 and has proposed the following questions of law for our consideration:

“2.1 Whether the impugned order is sustainable in law the submissions (oral as well as written) made by the Revenue have not been considered while deciding the matter?

2.2 Whether the ITAT is correct in deciding the issue of disallowance under section 14A of the Act failing to note and appreciate the grounds and submissions made by the assessee itself before the CIT(A)?

2.3 Whether the ITAT is legally justified in deciding the issue contrary the admission made by the assessee in its return of income and ignoring the said admission?

2.4 Whether the ITAT is legally justified in setting aside the disallowance made by Assessing officer under section 14A of the Act with direction by the Assessing officer to work out the disallowance by calculating the average investment under Rule 8D(2)(ii)/(iii) of the Income Tax Rules, 1962 by taking only those



investment which have actually yielded the dividend income during the relevant year and if it exceeds the exempt income then restricting the disallowance to exempt income only?"

2. Before us the solitary issue which was pressed was pertaining to Section 14A of the Income Tax Act, 1961 read along with Rule 8D of the Income Tax Rules, 1962. We note that the ITAT in the order under challenge has in paragraphs 7 and 8 held as follows:-

"7. Coming to the statement of the learned AR that in view of the decision in the case of *ACB India Ltd. vs ACIT*, 374 ITR 108 (Del) and *REI Agro Ltd. vs DCIT*, 144 ITO 141 (Kol-Trib), the appeal against which was dismissed by the Hon'ble Calcutta High Court in ITAT NO.220 of 2013 while calculating the average investment under Rule 8D(2)(ii)(iii), only those investments which have actually yielded dividend income during the relevant year should be considered, we are convinced with this argument and in fact, the Hon'ble Jurisdictional High Court in *ACB India Ltd. (supra)* held that the learned AO is required by the mandate of Rule 8D(2)(i) to (iii) detailed in the methodology to be adopted; and the learned AO cannot adopt the average value of the total investment instead of the average value of investment of which income is not part of a total income i.e. value of tax exempt investment. In view of this binding precedent, we find that the learned AO had to consider only those investments which have actually yielded the tax exempt income during the relevant year and not the total investment.

8. On the aspect of the contention of the assessee that the disallowance should be restricted to some reasonable proportion of actual dividend received and such disallowance cannot in any case, exceed exempt dividend income at Rs.87,05,855/- earned during the relevant year, this proposition is based on the decision of the Hon'ble jurisdictional High Court in the case of *Joint Investments P. Ltd. vs CIT*, 372 ITR 694 (Del). The ratio of the Hon'ble High Court holds the field and while respectfully following the same, we find that the disallowance shall not exceed the exempt income. We, therefore, set aside the issue and remand the matter to the file of the learned AO to work out the disallowance by calculating the average investment under Rule 8D(2)(ii)/(iii) by taking only those investments which have actually yielded the dividend income during the relevant year and if it exceeds the exempt income, then restrict the same to the extent of exempt income only. Ground Nos. I and Additional Grounds are allowed for statistical purposes."

3. The undisputed position on facts which thus emerges is of the



dividend income having been pegged at INR 87,05,855/-. It was in the aforesaid context that the ITAT, and in our considered opinion, correctly held that the disallowance would have to be co relatable to or at least be in reasonable proportion to the actual dividend income earned in a particular year.

4. While taking the aforesaid view, it has followed the judgment handed down by the Court in **Joint Investments Pvt. Ltd. v. CIT** [2015 SCC OnLine Del 7769] wherein the following was observed:

“9. In the present case, the Assessing Officer has not firstly disclosed why the appellant-assessee's claim for attributing Rs. 2,97,440 as a disallowance under section 14A had to be rejected. Taikisha says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the Assessing Officer—an aspect which is completely unnoticed by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal. The third and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000, the disallowance ultimately directed works out to nearly 110 per cent. of that sum, i.e., Rs. 52,56,197. By no stretch of imagination can section 14A or rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in section 14A and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.”

5. In view of the aforesaid, we find no merit in the instant appeal. No substantial question of law arises. Consequently, the appeal shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 08, 2024/MJ