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

% *Judgment reserved on: 01.09.2023*
Judgment pronounced on: 26.09.2023

\+ **ITA 162/2023**

PR. COMMISSIONER OF INCOME TAX-7 ..... Appellant
Through: Mr Puneet Rai, Sr Standing Counsel with Mr Ashvini Kumar, Standing Counsel.

versus

M/S SECURITY PRINTING AND MINING CORPORATION OF INDIA LTD ..... Respondent
Through: Mr Rajiv Tyagi & Mr Rohit Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

GIRISH KATHPALIA, J.

1. By way of this appeal, brought under Section 260A of the Income Tax Act 1961, the revenue has assailed order dated 30.06.2022 passed by the Income Tax Appellate Tribunal in ITA No. 272/Del/2019 pertaining to the Assessment Year 2014-15. On notice of the appeal, the respondent/assessee entered appearance through counsel. We heard learned counsel for both sides in the light of the judicial precedents cited by them.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The respondent/assessee, a public sector undertaking engaged in the business of designing and printing of bank notes, minting of coins, medallion seals and tokens etc, filed its return of income for the Assessment Year 2014-15 on 09.10.2014, declaring its income to be Rs.512,53,01,630/-.

2.2 The case of the respondent/assessee came under scrutiny and the Assessing Officer passed Assessment Order dated 19.12.2016 under Section 143(3) of the Act, thereby assessing the concerned income to be Rs.518,41,94,170/- after making additions to the tune of Rs.1,92,91,622/- on account of disallowance made under Section 14A of the Act and a further amount to the tune of Rs.3,96,00,919/- on account of Corporate Social Responsibility (CSR) expenses claimed by the assessee.

2.3 The respondent/assessee challenged the said Assessment Order before the Commissioner Income Tax (Appeals) [CIT (A)], but the said appeal of the respondent/assessee was dismissed vide order dated 05.10.2018, thereby upholding the additions made by the Assessing Officer.

2.4 However, the respondent/assessee succeeded before the Tribunal in the second appeal. Placing reliance on its earlier decisions in the case of the respondent/assessee for the Assessment Years 2012-13 and 2013-14, the learned Tribunal allowed the appeal and deleted both the impugned additions.

2.5 Hence, the present appeal by the appellant/revenue.

3. As would be evident, the present dispute revolves around the disallowance of CSR expenses and disallowance of expenditure under Section 14A of the Act. It would be apposite to briefly examine the view taken by the different authorities on these two aspects.

3.1 As regards CSR expenses, in its profit & loss account, the respondent/assessee recorded a sum of Rs. 3,96,00,919/- towards the same and was called upon by the Assessing Officer to explain as to why the said expenditure be not disallowed, being capital in nature. The respondent/assessee in reply dated 24.10.2016 took a plea that the said expenses had been legitimately claimed since no enduring benefit accrued or arose to the respondent/assessee in the future years. Taking note of the earlier decisions of CIT(A), wherein similar disallowance had been confirmed, the Assessing Officer found the submissions of the respondent/assessee as untenable and treated the CSR expenses as capital expenditure and added back the same to the total income of the respondent/assessee for the reason that CSR expenses are incurred for enduring long term benefits for communities, cultures and societies in which the respondent/assessee operates.

3.2 As regards disallowance under Section 14A of the Act, the Assessing Officer observed that the respondent/assessee had invested substantial money in mutual funds, dividend whereon is exempt from tax; and that the respondent/assessee also held shares of a joint venture company, which

shares being assets, can yield exempt income. Therefore, the respondent/assessee was called upon by the Assessing Officer to show cause why the expenditure related to earning of the exempt income should not be disallowed in view of Section 14A of the Act read with Rule 8D of the Income Tax Rules. The explanation advanced on behalf of the respondent/assessee to the effect that being a cash rich company, it did not have to incur any expenditure or deploy any person by way of any special efforts which could be treated as directly or indirectly an expenditure incurred to earn the dividend income, was held by the Assessing Officer to be not acceptable.

3.3 As mentioned above, the CIT(A) upheld the view taken by the Assessing Officer on both counts.

3.4 By way of order impugned in the present appeal, the learned Tribunal, expressing concurrence with their earlier orders pertaining to the respondent/assessee for the Assessment Years 2012-13 and 2013-14 held that the CSR expenses incurred by the respondent/assessee are not in the nature of personal expenditure or for violation of law and the same could not be held to be capital, therefore, the impugned disallowance of CSR expenses was liable to be deleted.

3.5 As regards the disallowance under Section 14A of the Act, the learned Tribunal, referred to their earlier orders pertaining to the Assessment Year 2011-12 when similar disallowance was deleted, observing that the

investment advisors were managing the funds concerned without any cost to the assessee and there was no direct or indirect expense on account of establishment, audit fees or otherwise incurred qua operation of the said funds, as the dividend was being automatically reinvested in the plan by the UTI on the basis of instructions of the assessee. The learned Tribunal in that regard also referred to their earlier order pertaining to the year 2012-13, whereby the disallowance under Section 14A of the Act was deleted because while invoking the disallowance the Assessing Officer had nowhere recorded his satisfaction as to why the explanation rendered by the assessee was not tenable; and in this regard, the Tribunal had earlier placed reliance on the judgment of Hon'ble Supreme Court in the case of ***Godrej & Boyce Manufacturing Co. Ltd. vs DCIT***, (2017) 7 SCC 421.

4. Before this court, in the backdrop of above two issues raised on behalf of the appellant/revenue, at the time of preliminary hearing dated 20.03.2023, learned counsel for appellant/revenue in all fairness conceded that the issue pertaining to CSR expenses already stands covered by a judgment dated 06.01.2023, passed by this court in ITA 03/2023 titled ***PCIT vs Steel Authority of India Ltd***., 2023/DHC/000307. Learned counsel for appellant/revenue sought admission of this appeal only with regard to the deletion of disallowance made by the Tribunal under Section 14A of the Act.

5. As such, the appeal was admitted on the following question of law:

"Whether in the facts and circumstances of this case, the deletion

of disallowance made by the learned Tribunal under Section 14A of the Act was not in accordance with law?"

With the consent of learned counsel for both sides, we heard the appeal finally at this stage itself.

5.1 Learned counsel for appellant/revenue contended that the impugned order is contrary to law, so liable to be set aside. It was argued that the Tribunal wrongly placed reliance on its earlier decisions since it is settled principle of law that the doctrine of *res judicata* is not applicable to the proceedings under the Income Tax Act. It was argued by the learned counsel for appellant/revenue that the learned Tribunal failed to appreciate that it is not possible to earn such a substantial exempt income without incurring any expenditure and to that extent, deleting the disallowance under Section 14A of the Act was not sustainable. In support of his arguments, learned counsel for appellant/revenue placed reliance on the judgments in the cases of ***India Bulls Financial Services Ltd vs DCIT***, (2016) 76 Taxmann.com 268 (Delhi); ***HT Media Ltd vs PCIT,*** (2022) 145 Taxmann.com219 (Delhi); and ***Devarsons Industries (P) Ltd vs ACIT (OSD),*** (2017) 84 taxmann.com 244(Gujrat). Placing reliance on the judgment in the case of ***India Bulls Financial Services Ltd*** (supra),learned counsel for appellant/revenue argued that even though the Assessing Officer had not recorded his express dissatisfaction with regard to the disallowance made under Section 14A of the Act, it would not *ipso facto* be considered to be that the Assessing Officer was not satisfied or did not have cogent reasons for his dissatisfaction. Learned counsel for appellant/revenue

strongly contended that it is natural and obvious that certain expenditure in the nature of administrative and other expenses would have certainly been incurred by the respondent/assessee for maintaining such assets.

5.2 Per contra, learned counsel for respondent/assessee supported the impugned order and contended that the appeal is completely devoid of merit. Learned counsel for respondent/assessee, at the outset, contended that the issue involved in the present case stands already covered by an earlier judgment of this court in the case of ***Coforge Limited (formerly known as NIIT Technologies Ltd) vs ACIT***, ITA 213/2020, decided on 09.04.2021. Learned counsel for respondent/assessee contended that where the subject expenditure has no causal connection with the exempted income, such expenditure would obviously be treated as not related to the income that is exempted from tax and such expenditure would be allowed as a business expenditure. Learned counsel for respondent/assessee also argued that decision of the learned Tribunal in previous Assessment Years, as detailed in the impugned order, was not challenged by the appellant/revenue, which shows that the appellant/revenue had accepted the legality of the earlier decisions and now the appellant/revenue cannot reagitate the same. Learned counsel for respondent/assessee strongly contended that the Assessing Officer failed to examine the accounts of the assessee before passing the impugned Assessment Order, and that vitiated the Assessment Order. In support of his submissions, learned counsel for respondent/assessee placed reliance on the judgments in the cases of ***Godrej & Boyce Manufacturing vs DCIT***, (2017) 7 SCC 421; ***Maxopp Investment Ltd. vs. CIT***, (2018) 15 SCC

523; ***South Indian Bank Limited vs CIT,*** (2021) 10 SCC 153; ***Radha Swami Satsang, Agra vs CIT,*** (1992) 1 SCC 659; ***M/s Godrej Sara Lee Limited vs E.T.O cum A.O. & Ors*** (2023) SCC Online (1) SCC 443***; Pr. CIT vs Steel Authority of India Ltd.,*** 2023/DHC/000307; ***CIT vs Reliance Industries Ltd [CIT vs Reliance Industries Ltd]*** (2019) 20 SCC 478 : (2019) 410 ITR 466***; CIT vs Chenniappa Mudiliar*** (1969) 1 SCC 591; ***CIT vs Shoorji Vallabhdas & Co***. (1962) 46 ITR 144 (SC);and ***Union of India vs Intercontinent Consultants and Technocrats Pvt. Ltd.,*** (2018) 4 SCC 669.

6. It is in the above backdrop that rival contentions have to be examined. For the sake of convenience, the relevant portion of Section 14A of the Act is extracted below:

> *"14A. Expenditure incurred in relation to income not includible in total income.*
>
> *(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.*
>
> *(2)The Assessing Officer* ***shall determine*** *the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer,* ***having regard to the accounts of the assessee****, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.*
>
> *(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:*

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April, 2001."

(emphasis is ours)

6.1 In the case of ***HT Media Ltd*** (supra), relied upon by learned counsel for appellant/revenue, unlike the present case (*where the respondent/assessee took a specific and reasoned stand having not spent any expenses coverable under Section 14A of the Act*), the respondent/assessee took a stand having incurred some negligible indeterminate expenses pertaining to the exempt income and it was under these circumstances that the Assessing Officer invoked Rule 8D(2)(iii) and recomputed the expenses at higher amount. The Assessing Officer in the said case, unlike the present case, did not proceed on assumption that the assessee *might have* incurred some expenses. Unlike the present case, the Assessing Officer in the said case recorded explicit findings of negative satisfaction on the basis of examination of accounts of the assessee.

6.2 In the case of ***India Bulls Financial Services Ltd.*** (supra), relied upon by the learned counsel for appellant/revenue, unlike the present case, the Assessing Officer carried out an elaborate analysis of the record in order to arrive at computation of Rs.3,87,00,000/- as expenses attributable to the exempted income. In the said case, the Division Bench of this court observed that the Assessing Officer is under a mandate to apply the formulae prescribed under Rule 8D in view of the provisions under Section

14A(2) of the Act and in a given case if the Assessing Officer is confronted with a figure which *prima facie* is not in accordance with what should be the approximate figure on a fair working out of the provisions, the Assessing Officer is duty bound to reject the figure of disallowance explicitly and then proceed to work out the methodology. Rather, the records in the said case clearly reflected that the Assessing Officer had carried out an elaborate analysis, which unfortunately did not take place in the present case.

6.3 Similarly, in the case of ***Devarsons Industries (P) Ltd.*** (supra), relied upon by learned counsel for appellant/revenue, the Division Bench of the Gujarat High Court also observed that sub-section (2) of Section 14A of the Act permits the Assessing Officer to determine such expenditure if he, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure.

6.4 In the case ***Coforge Limited*** (supra), relied upon by learned counsel for respondent/assessee, the Division Bench of this court, wherein one of us [Rajiv Shakdher, J.] was a member, the same issue as involved in the present case was examined at length and it was held thus :

> *"12.5. As would be evident, the Tribunal's reasoning is based on an approach where it assumes that no income can be earned without incurring expenditure;*
>
> *……*
>
> *12.7. A careful perusal of Section 14A(2) of the Act would show that* ***the AO is required to make a determination of the expenditure incurred, concerning the income which does not form part of the total income, if the AO is not satisfied, having regard to the accounts of the assessee, as to the correctness of claims made by the assessee about such expenditure****.*

12.8. Sub-section 3 of Section 14A of the Act makes it clear that the parameters stipulated in the said provision will also apply where the assessee claims that no expenditure has been incurred by him concerning income that doesn't form part of the total income under the Act.

13. Therefore, what emerges is, if the assessee claims a certain amount of expenditure was incurred by him to earn the income which does not form part of the total income, ***the AO is required to examine the accounts, and thus, satisfy himself as to the correctness of the claim made by the assessee*** *about the expenditure incurred in that regard. It is when an AO is not satisfied as to the correctness of the claim made by the assessee, about the expenditure said to have been incurred by him on such income which does not form part of the total income under the Act, he then proceeds to determine the amount of expenditure, by following such method as is prescribed, i.e., Rule 8D of the Rules.*

13.1. This methodology, as envisaged under Rule 8D of the Rules, is required to be followed even where the assessee claims that no expenditure was incurred by him concerning income which does not form part of the total income under the Act.

13.2. The approach of the Tribunal has been that, since a disallowance was made, it follows logically, that the AO was not satisfied. This, according to us, is not what is envisaged under the provisions of Section 14A of the Act. ***The satisfaction has to be arrived at by the AO having regard to the assessee's accounts and not otherwise****. Concededly, there is nothing in the record to suggest that the AO examined the accounts from this perspective".*

(emphasis is ours)

7. Section 14A of the Act has always been a highly litigious one on account of its universal application because almost all assessees have investment portfolio which might give rise to tax free income. By way of Finance Act 2001, the provision under Section 14A was inserted in the Income Tax Act 1961 with retrospective effect from 01.04.1962. Section 14A of the Act basically provides that for the purposes of computing the

total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. According to Section 14A of the Act, expenditure incurred in relation to exempt income cannot be claimed against any other income includible in the total income for the purpose of chargeability to tax. It is the decision of the Hon'ble Supreme Court in the case of ***Rajasthan State Warehousing Corpn. vs CIT,*** [2000] 242 ITR 450 that led to the process of insertion of Section 14A in the Act. In the said case, it was held that where an assessee had a composite and indivisible business having both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and the theory of apportionment of expense in relation to exempt income does not apply. The rationale behind insertion of Section 14A of the Act was that the basic principle of taxation is to tax net income only, i.e. gross income minus the expenditure incurred and on that analogy, the exemption is also in respect of the net income only, thus expenditure can be allowed only to the extent it is relatable to the earning of taxable income. [*Ref.: Western India Regional Council of The Institute of Chartered Accountants of India Reference Manual 2022-23*].

8. Like any other claim under the Act, the acceptance of assessee's claim qua the disallowance under Section 14A of the Act is subject to satisfaction of the Assessing Officer and that satisfaction has to be on the basis of scrutiny of accounts of the assessee. According to Section 14A of the Act, if the Assessing Officer, having regard to the accounts of the assessee is not

satisfied with the correctness of the claim of the assessee in respect of such expenditure qua the exempt income, he shall determine the amount of expenditure incurred in relation to the exempt income in accordance with the method prescribed in that regard and this principle also applies to the cases where the assessee contends that no expenditure has been incurred in relation to earning of exempt income.

9. For effectuating the provisions under Section 14A of the Act, Rule 8D was framed in the Income Tax Rules in the year 2008, operable from Assessment Year 2008-09. In the year 2016, Rule 8D was amended, operable from Assessment Year 2017-18. For present purposes, the relevant portion of Rule 8D is extracted below:

> *"8D. Method for determining amount of expenditure in relation to income not includible in total income. –*
> *(1) ……*
> *(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-*
> *(i) the amount of expenditure directly relating to income which does not form part of total income;*
> *(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely:-*
>
> $$A \; X \; \frac{B}{C}$$
>
> *Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;*
> *B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;*
> *C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year,*

> *(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.".*

10. It is often seen that the Assessing Officers in the sphere of Section 14A of the Act make disallowance by direct resort to Rule 8D of the Act without recording satisfaction that the claim made by the assessee is incorrect having regard to the accounts of assessee. This, despite explicit judicial pronouncements of the Hon'ble Supreme Court in plethora of cases like ***Godrej & Boyce Manufacturing*** (supra), followed by ***Maxopp Investment*** (supra), in which it was held that where the assessee has *suo motu* made a disallowance or has made a claim that no expenditure has been incurred in earning the exempt income, the Assessing Officer needs to verify the correctness of such claim with regard to the accounts of the assessee and in case the Assessing Officer is satisfied that the claim is incorrect, he must record such satisfaction in an objective manner and only thereafter the Assessing Officer can take resort to the method prescribed in Rule 8D of the Rules.

11. In the case of ***Godrej & Boyce Manufacturing Co. Ltd.*** (supra), the Hon'ble Supreme Court examined the provisions under Section 14A of the Act and Rule 8D of the Rules as well as the mandate of consistency in decision making vis a vis the doctrine of *res judicata* in detail, concluding thus:

> *"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****, (1992) 193 ITR (SC) 321.*

> *"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."*

12. In the case ***Maxopp Investment*** (supra) also, the Hon'ble Supreme Court described the legal position pertaining to and the genesis of Section 14A of the Act traversing through various judicial pronouncements on the subject and held thus:

> *"41. In the first instance, it needs to be recognised that as per Section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed.* ***If an expenditure incurred has***

> ***no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure****. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income".*
>
> *(emphasis is ours)*

13. Evidently, in order to ascertain the causal connection between the subject expenditure and the exempted income, the Assessing Officer has to mandatorily scan and scrutinize the accounts of the assessee.

14. In the present case, the Assessing Officer, to a certain extent, aptly observed that Section 14A(2) of the Act empowers (*rather, it enjoins a duty upon*) the Assessing Officer to determine the expenditure in relation to income not forming part of total income if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in regard to such expenditure. The Assessing Officer further observed:

> "*It is obvious that certain expenditure of the nature of administrative and other expenditures* ***are bound to be have been incurred*** *by the assessee simply for the reason that the assessee is maintaining such assets, in this case being units of mutual funds and shares of the joint venture company, which has yielded or can yield incomes which does not form part of total income*"
>
> *(emphasis is ours).*

The Assessing Officer proceeded to hold: *"some expenditures such as those incurred on man-hours spent on maintenance of accounts of such investments, man-hours spent on reconciliation of such investments, documentation, stationery, computer resources, accounting software etc. are attributable to the fact that the assessee is having such assets in its balance sheets"*. Similarly, the Assessing Officer also assumed that the

expenditure incurred by the respondent/assessee towards audit of such investments and representation before the authorities are also expenses incurred towards maintaining such assets. Having thus concluded the disallowance under Section 14A of the Act, the Assessing Officer took recourse to Rule 8D(iii) of the Rules and quantified the disallowance to be Rs.1,92,91,622/-, being 0.5% of the average investment Rs.385,83,24,506/-.

15. Admittedly, before recording the aforesaid disbelief, the Assessing Officer did not examine even a shred of accounts of the respondent/assessee. Without looking into accounts of the respondent/assessee, the Assessing Officer held that the respondent/assessee had infused funds by way of equity in the joint venture company and also held that it was not believable that no expenditure had been incurred in relation to the assets, income wherefrom does not form part of total income. Completely ignoring the version of the respondent/assessee that being a cash rich company, it did not have to deploy any person by way of any special effort which could be treated as expenditure to earn the exempted income, the Assessing Officer recorded a conclusion that the respondent/assessee had infused significant funds by way of equity in the joint venture company. No cogent reasons, much less supported by data extracted from accounts of the respondent/assessee were advanced by the Assessing Officer to explain why the case set up by the respondent/assessee was not believable. Even the quantification of the disallowance was carried out under Rule 8D(iii) of the Rules without scrutinizing the accounts of the respondent/assessee and by jumping over the mandate to first proceed under Section 14A of the Act.

16. Such conjectural decision of the Assessing Officer, that too, to the prejudice of the respondent/assessee cannot be sustained. Therefore, we are unable to find any infirmity in the impugned order of the learned Tribunal and the same is upheld, answering the question of law framed above against the appellant/revenue and in favour of the respondent/assessee.

17. Accordingly, the appeal is dismissed.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

SEPTEMBER 26, 2023/as