

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 415 of 2015 (O&M)
Date of decision: 12.1.2016**

The Principal Commissioner of Income Tax I, Chandigarh

.....Appellant

M/s Empire Package Pvt. Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?* **YES**
3. *Whether the judgment should be reported in the digest?*

Present: Ms. Urvashi Dhugga, Advocate for the appellant.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 18.6.2015, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Benches - 'SMC' in ITA No.978/Chd/2013 for the assessment year 2009-10, claiming following substantial question of law:-

“Whether in the facts and circumstances of the case, the Hon'ble ITAT is justified in law to hold that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, in the absence of any such restriction being there in the relevant section or rule?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a company engaged in the business of manufacturing and sale of corrugate boxes and sheet. It filed its return of income for the assessment year in question declaring loss of ₹ 64,455/-. The assessee had made investment in shares and mutual funds amounting to ₹ 10,87,172/- and declared dividend income of ₹ 1,11,564/- and agricultural income of ₹ 32,000/-. As the agricultural income and dividend income are exempt incomes, the Assessing Officer made disallowance of ₹ 4,09,675/- by invoking the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules,1962 (in short, "the Rules"). Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 18.7.2013, Annexure A.2, the CIT(A) partly allowed the appeal. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 18.6.2015, Annexure A.3, the Tribunal set aside the order passed by the CIT (A) and remitted the matter to the Assessing Officer with the direction to decide the issue afresh in accordance with law. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The Tribunal has only remanded the matter to the Assessing Officer after considering the factual position and the relevant case law on the point. It relied upon the decision rendered by this Court in **CIT vs. Deepak Mittal**, (2013) 38 Taxman 83 holding that disallowance under Section 14A of the Act requires finding of incurring of expenditure in respect of exempted income and where it is found that for earning exempted income, no expenditure has been incurred, disallowance under section 14A

of the Act cannot stand. In the present case, when the assessee claimed that it had not made any expenditure on earning exempt income, the Assessing Officer in terms of sub section (2) of Section 14A of the Act was required to collect such material evidence to determine expenditure if any incurred by the assessee in relation to earning of exempt income. The income from dividend had been shown at ₹ 1,11,564/- whereas disallowance under Section 14A read with Rule 8D of the Rules worked out by the Assessing Officer came to ₹ 4,09,675/-. Thus, the Assessing Officer disallowed the entire tax exempt income which is not permissible as per settled position of law. Consequently, the Tribunal remitted the matter to the Assessing Officer with a direction to decide the same afresh in accordance with law after affording due and reasonable opportunity of being heard to the assessee. The relevant finding recorded by the Tribunal reads thus:-

“7. In the instant case, the income from dividend has been shown at ₹ 1,11,564/-, the disallowance under section 14A read with Rule 8 D worked out by the Assessing Officer comes to ₹ 4,09,675/-. Thus, it is clear that the AO has disallowed the entire tax exempt income which is not permissible in view of the judgment of the Hon'ble Delhi High Court referred to above. The Hon'ble Delhi High Court held that 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”. The disallowance under section 14A read with Rule 8D as worked out by the Assessing officer is not in accordance with law and as such working is not sustainable.

8. In view of the above observations, I think it is appropriate to set aside the order of the learned CIT(A) on this issue and remit the matter to the file of AO with a direction to decide the issue afresh in accordance with law after affording due and reasonable opportunity of being heard to the assessee.”

Additionally, the tax effect involved is of ₹ 1,26,589/- only.

5. The view adopted by the Tribunal being a plausible view based on factual position and the relevant case law on the point, does not warrant any interference by this Court. Learned counsel for the appellant-revenue has not been able to show any illegality or perversity in the impugned order. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 12, 2016
'gs'

(Raj Rahul Garg)
Judge



सत्यमेव जयते

