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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 585/2014

Date of decision: 3rd December, 2014

AMWAY INDIA ENTERPRISES PVT. LTD. Appellant
Through Mr. M.S. Syali, Sr. Advocate with Mr.
Mayank Nagi, Advocate.

versus

INCOME TAX OFFICER Respondent
Through Mr. N.P. Sahni, Sr. Standing Counsel
with Mr. Nitin Gulati, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

Having heard counsel for the parties, we frame the following
substantial question of law in this appeal which relates to the
assessment year 2008-09:-

“Whether the Income Tax Appellate Tribunal was
right in holding that the Assessing Officer had
accorded implicit satisfaction under Section 14A(2) of
the Income Tax Act, 1961, which got converted into
explicit satisfaction by the reason on discussion in the
order passed by the Commissioner of Income Tax
(Appeals)?”

2. Section 14A of the Income Tax Act, 1961 reads as under:-

“14A. (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.”

3. The aforesaid provision was interpreted by the Delhi High Court in ***Maxopp Investment Ltd. versus CIT*** [2010] 347 ITR 272 (Del) and it was held that sub-section (2) to Section 14A of the Income Tax Act, 1961 (Act, for short) mandates and requires the Assessing Officer to record his satisfaction on the correctness of the claim made by the assessee in respect of the expenditure in relation to the income, which does not form part of the total income before embarking on and applying Rule 8D of the Income Tax Rules, 1962.

4. Similar interpretation has been given by the Bombay High Court

in the case of *Godrej and Boyce Mfg. Co. Ltd. versus CIT* [2010] 328 ITR 81 (Bombay).

5. The contention raised by the appellant-assessee in the present appeal is that no such satisfaction as mandated and required under Section 14A(2) of the Act was recorded by the Assessing Officer either in the order sheet or in the assessment order. The Income Tax Appellate Tribunal (Tribunal, for short) in the impugned order has noticed the said fact, but recorded that there was an implicit satisfaction. The Tribunal has further mentioned that the Commissioner of Income Tax (Appeals) while deciding the contention of the assessee had examined the said facts and had recorded explicit satisfaction.

6. Tribunal by the impugned order after recording the said findings has passed an order of remand to the Assessing Officer.

7. Learned counsel for the appellant-assessee has made a statement at the Bar, which we have taken on record, that during the course of remand proceedings, it will be open to the Assessing Officer to go into the question whether or not the disallowance made by the assessee on account of expenditure in relation to exempt income should be accepted and in case the Assessing Officer is not satisfied, he can record his dissatisfaction and thereafter proceed as per law. Learned counsel for the appellant-assessee submits that in preceding two years, pursuant to the order of remand passed by the Tribunal, the matter is pending before

the Assessing Officer.

8. The net effect of the aforesaid statement is that during the course of remand proceedings, the Assessing Officer will go into the question of disallowance under Section 14A of the Act made by the assessee and after examination, if he is not satisfied with the claim, he can proceed as per law.

9. In view of the said statement, we would not like to examine the controversy and question, whether the satisfaction recorded by the Assessing Officer was implicit and whether implicit satisfaction would meet the requirement and mandate of sub-section (2) to Section 14A of the Act. We also need not go into the question, whether the Commissioner of Income Tax (Appeals) can record satisfaction so as to meet the statutory mandate of Section 14A of the Act. The said aspect/questions are not required to be decided, being of academic interest in the present appeal.

10. The question of law is accordingly answered in terms of the concession given by the learned counsel for the assessee. Accordingly, the observations of the Tribunal that there was implicit satisfaction of the Assessing Officer and explicit satisfaction of the Commissioner of Income Tax (Appeals) shall be treated as set aside. However, it will be open to the Assessing Officer to examine the claim of the assessee as per Section 14A of the Act and proceed in accordance with law.

The appeal is disposed of. No costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 03, 2014

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