

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 101 of 2020**

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-1

Versus

CIMS HOSPITAL PVT. LTD.

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Appearance:

MRS MAUNA M BHATT(174) for the Appellant(s) No. 1

for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 25/02/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. This Tax Appeal is filed under Section 260A of the Income Tax Act-1961 (for short the "Act-1961") at the instance of revenue and is directed against the order dated 05.09.2019, passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', Ahmedabad (for short the "Tribunal") in the ITA No.3213/Ahd/2016 for the Assessment Year 2012-13.

2. The Revenue has proposed the following two questions as substantial questions of law:-

*"2(A) Whether Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.35,825/- made under Section 14A r.w. Rule 8D?*

*(B) Whether Appellate Tribunal has erred in law and on facts deleting the addition of disallowance made under Section 14A to the book profit under Section 115JB of the Act?*

3. The Assessing Officer, during the course of the proceedings, disallowed the amount of Rs.35,825/- under Section 14A of the Act-1961. The Assessing Officer was of the view that though the assessee has disallowed the amount of Rs.5500/- under Section 14A of the Act-1961 in the statement of income, the assessee did not correctly work out the disallowance. According to the Assessing Officer, the correct working for the purpose of disallowance under Section 14A of the Act-1961 r.w. Rule 8D of the Income tax Rules, 1962 (for short the "Rules-1962") was Rs.41,325/- as against Rs.5500/- calculated by the assessee. The Assessing Officer, therefore, made an addition of Rs.35,285/- to the total income of the assessee.

4. The assessee being aggrieved preferred an appeal before the CIT(A). The CIT(A) rejected the appeal qua the disallowance made by the Assessing Officer under Section 14A of the Act-1961.

5. The assessee being dissatisfied with the order of CIT(A) preferred an appeal before the Tribunal. Considering the provisions of Section 14A of the Act-1961 read with Rule 8D of the Rules-1962, the Tribunal came to the conclusion that in order to make disallowance, the Assessing Officer has to be satisfied with regard to correctness of the claim of the assessee having regard to the amounts of expenditure in relation to his income which does not

form part of the total income under the Act-1961. The Tribunal, in the facts of the case, found that the Assessing Officer has not recorded any satisfaction in terms of Section 14A (2) of the Act-1961 so as to apply Rule 8D of the Rules-1962 for computation of amount of expenditure to be disallowed under Section 14A of the Act-1961. The Tribunal, therefore, allowed the appeal filed by the assessee deleting the disallowance made under Section 14A of the Act-1961 by the Assessing Officer.

6. In order to consider whether the Tribunal has the correctly deleted disallowance made under Section 14A of the Act-1961 read with Rule 8D of the Rules-1962, it would be germane to refer section 14A of the Act-1961, which reads thus:-

***“Expenditure incurred in relation to income not includible in total income:-***

**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."

7. On perusal of the aforesaid provisions, it is clear that to determine the amount of expenditure incurred by the assessee in relation to the income which does not form part of the total income under the Act-1961, the Assessing Officer can apply the method to calculate such expenditure as provided under Rule 8D of the Rules-1962 only if the Assessing Officer having regard to accounts of the assessee is not satisfied with the correctness of the claim made by the assessee in respect of such expenditure in relation to the exempted income under the Act-1961. Thus, pre-condition for applying Rule 8D of the Rules-1962, the Assessing Officer is required to be satisfied as provided in sub-section 2 of Section 14A of the Act-1961.

8. In the aforesaid context, we may refer recent pronouncement of this Court in the case of **Principal Commissioner of Income Tax Vs. Gujarat State Fertilizer and Chemical Ltd [(2019) 416 ITR 13 (Guj)]**, wherein this Court has observed as under:-

*"17. This Court, in Shreno Limited (supra), has taken the view that Maxopp Investment Limited*

(supra) cannot be seen or understood to be fundamentally changing the understanding and interpretation of Section 14A and Rule 8D. It went on to hold that the judgment of the Supreme Court does not lay down the proposition that, the requirement of sub-rule (1) of Rule 8D of recording the satisfaction by the Assessing Officer before applying the formula given in sub-rule (2) of Rule 8D is done away with. It clarifies that the judgment in the case of Maxopp Investment Limited does not lay down a proposition that the moment it is demonstrated that the assessee had availed of mixed funds and utilized them for making investment into securities earning tax free income, Section 14A read with Rule 8D would be attracted automatically. The assessee has further relied on the judgment in the case of Principal Commissioner of Income Tax v. Gujarat State Financial Services Limited in the Tax Appeals Nos.1252, 1253 and 1255 of 2018 decided on 15<sup>th</sup> August 2018, which has followed the decision in the case of Shreno Limited (supra) dealing with the same issue and also an identical argument taken by the department.

18. The language of Section 14A of the Act is plain and clear. Before invoking Rule 8D, the Assessing Officer is obliged to indicate that having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income under the Act. To put it in other words, the condition precedent of recording the requisite satisfaction which is a safeguard provided in Section 14A should not be overlooked before going to Rule 8. In such circumstances we are not impressed by the submission canvassed on behalf of the Revenue that once there are mixed funds, Rule 8 would be attracted automatically."

9. The Tribunal has arrived at finding of fact that as the Assessing Officer did not record any satisfaction under Section 14A(2) OF the Act-1961 prior to invoking Rule 8D, he could not have made any disallowance by applying Rule 8D of the Rules-

1962.

10. We are in agreement with the finding of facts arrived at by the Tribunal. Therefore, Question No.2(A) as proposed by the Revenue cannot be termed as substantial question of law arising from the impugned order of the Tribunal.

11. So far as Question No.2(B) is concerned, as the Question No.2(A) is answered in favour of the assessee to the effect that the Tribunal has not erred in deleting the disallowance under Section 14A of the Act-1961 read with 8D of the Rules-1962, question of making addition of disallowance made under Section 14A by the Assessing Officer to the book profit under Section 115JB of the Act-1961 would not arise. Therefore, the Question No.2(B) is also rejected. सत्यमेव जयते

In the result, the appeal fails and stands dismissed.

Registry is directed to permit Mrs.Mauna Bhatt, learned Standing Counsel for the Revenue to replace the papers of Tax Appeal No.101 of 2020.

**(J. B. PARDIWALA, J)**

**(BHARGAV D. KARIA, J)**

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