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

+ ITA 390/2022

THE PR. COMMISSIONER OF INCOME

TAX -CENTRAL -1

..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel for Revenue with Ms.
Mansie Jain, Advocate.

versus

IFFCO LTD.

..... Respondent

Through: Mr. Mayank Nagi & Mr.Tarandeep
Singh, Advocates.

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Date of Decision: 11th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the order dated 06th January, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.7367/DEL./2017 for the Assessment Year ('AY') 2007-08.
2. Learned Counsel for the Appellant states that the expenditure incurred for earning dividend income of Rs.113.86 crores from OMIFCO-OMAN, an overseas company in Oman, cannot be disallowed under Section 14A of the Income Tax Act, 1961 ('the Act'), as no tax is payable on the said dividend in Oman and India, as tax sparing credit of notional tax on the Dividend is allowed under Article 25 of India-Oman DTAA. He states that the ITAT has erred in not appreciating the fact that the assessee is effectively not paying any tax on the said income either in the source country or in India and thus,



dividend income for all purposes is exempted from tax. He further states that the ITAT has erred in restricting the disallowance to the tune of Rs.74.26 lakhs as against Rs.9.10 Crore, disallowance made by the Assessing Officer under Section 14A read with Rule 8D of the Act after excluding the investment in OMIFCO-Oman.

3. This Court is of the opinion that in view of Section 14A(1), no deduction is to 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. As per Section 2(45) of the Act, “*total income*” means the total amount of income referred to in Section 5, computed in the manner laid down in the Act. Therefore, Section 14A pertains to disallowance of deduction in respect of income which does not form part of the total income. Since the dividend received by the assessee from OMIFCO, Oman is chargeable to tax in India under the head “*Income from other sources*” and forms part of the total income, the same is included in taxable income in the computation of income filed by the assessee. However, rebate of tax has been allowed to the assessee from the total taxes in terms of Section 90(2) of the Income Tax Act read with Article 25 of the Indo Oman, DTAA and thus, the dividend earned can be said to be in the nature of excluded income and, therefore, the provisions of Section 14A would not be attracted in this case.

4. This Court in the case of ***CIT vs. M/s Kribhco [2012] 349 ITR 618 (Delhi)*** has held that provisions of Section 14A are inapplicable as far as deductions, which are permissible and allowed under Chapter VIA are concerned. The relevant extract of the judgment is reproduced hereinbelow:-



“32...Thus, the income on which the deduction is allowed forms a part of the total income, though not included in the amount or quantum on which tax is paid.

...

34. Section 14A states that for the purpose of computing total income under Chapter IV, no deduction shall be allowed in respect of expenditure incurred in relation to the income which does not form part of the total income under this Act. It does not state that income which is entitled to deduction under Chapter VI-A has to be excluded for the purpose of the said Section. The words “do not form part of the total income under this Act” is significant and important. As noticed above, before allowing deduction under Chapter VI-A we have to compute the income and include the same in the total income. In this manner, the income which qualifies for deductions under Sections 80C to 80U has to be first included in the total income of the assessee. It, therefore, becomes part of the income, which is subjected to tax. Thereafter, deduction is to be allowed in accordance with and subject to the fulfillment of the conditions of the respective provisions. This is also subject to Section 80AB and 80A(1) and (2). Chapter VI-A does not postulate or state that the incomes which qualify for the said deduction will be excluded and not form part of the total income. ***They form part of the total income but are allowed as a deduction and reduced.***”

(emphasis supplied)

5. In view of the aforesaid mandate of law, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

भारतमेव जयते

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 11, 2022/msh