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

Decided on 24th March, 2015

+ ITA 615/2014

ACB INDIA LIMITED (FORMERLY M/S ARYAN COAL
BENEFICATIONS (P) LTD. Appellant

Through Mr. Salil Kapoor and Mr. Vikas Jain,
Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX.... Respondent

Through Mr. N P Sahni, sr. standing counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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CM No.16296/2014

Exemption is allowed subject to all just exceptions.

The application is disposed of.

CM No.16297/2014

For the reasons mentioned in the application the delay in refiling the appeal is condoned.

The application is disposed of.

ITA 615/2014

1. Admit.
2. Mr. N P Sahni, Advocate accepts notice.
3. The question of law urged on behalf of the assessee is whether the decision of the ITAT as to the disallowance under Section 14A of the

Income Tax Act, is in error of law in the circumstances of the case. For the assessment year 2008-09 the assessee – which is mainly engaged in the business of coal preparation, i.e. beneficiation of coal, transportation, loading of coal and related activities, had reported a tax exempt income to the tune of ₹18,26,360/- amongst other heads of income. The AO added back ₹19,96,242/- under Section 14A. While doing so, the AO applied Rule 8D by taking into consideration the total quantum of interest other than that invested, under Section 14A in terms of Rule 8D, and arrived at the said figure after multiplying it with the result of the average value of investments and over average value of assets derived by him. He thus determined the disallowance of ₹19,96,242/-. The CIT(Appeals) went into the record and found that the amount of investment attributable to dividend as on 31.3.2008 was ₹3,53,26,800/-, which constituted less than 1% of the total scheduled funds. He however accepted the basis of calculation applied by the AO and directed a disallowance of .05% of the amount determined to be average investment. The ITAT – to which the revenue appealed, restored the AO's determination holding it to be a true calculation in terms of Rule 8D. It is argued by the assessee that since CIT(Appeals) correctly noted the facts as to the value of the investment in tax exempt investment, and at the same time noticed that the ultimate result on an application of .05% disallowance would be same. Counsel for the revenue on the other hand, submitted that given the determination of average value of investment, the AO had no choice but to apply Rule 8D(2) in view of mandate of section 14A which required him to apply the prescribed method of determining disallowance. Facts as disclosed by the AO, who expressed his opinion that the claim of the assessee for no disallowance was warranted since no expenditure was

incurred, had to be rejected. Therefore, the first condition for application of Section 14A in this case was fulfilled. In such eventuality the AO is required by the mandate of Rule 8D to follow Rule 8D(2). Clauses 1, 2 and 3 detail the methodology to be adopted. Clauses are of importance, they read as follows :

“Method for determining amount of expenditure in relation to income not includible in total income.

8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(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 :—

$$A \times \frac{B}{C}$$

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.

(3) For the purposes of this rule, the “total assets” shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.”

4. The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Appeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of ₹38,61,09,287/- with the figure of ₹3,53,26,800/- and thereafter arrive at the exact disallowance of .05%.

5. In view of the above reasoning, the findings of the ITAT and the lower authorities are hereby set aside. The appeal is allowed and the matter is remitted to work out the tax effect to the AO who shall do so after giving

due notice to the party.

**S. RAVINDRA BHAT
(JUDGE)**

**R.K.GAUBA
(JUDGE)**

MARCH 24, 2015

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