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

Date of decision : December 19th, 2011

+ ITA 1074/2011

CIT

..... Appellant

Through: Mr. N.P.Sahni and
Mr. Ruchesh Sinha, Advs.

versus

GALILEO INDIA PVT LTD

..... Respondent

Through: Mr. Tapas Ram Misra and
Mr. Ashu Kansal, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

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

SANJIV KHANNA,J: (ORAL)

This appeal under Section 260A of the Income Tax Act, 1961 is directed against the order of the Income Tax Appellate Tribunal dated 16.12.2010 in the case of M/s. Galileo India Pvt. Ltd. and relates to assessment year 2005-06. By the impugned order the Tribunal has quashed the order passed by the

Commissioner of Income Tax, Delhi under Section 263 of the Income Tax Act.

2. After hearing counsel for the parties the following substantial question of law is framed:-

“Whether the Income Tax Appellate Tribunal was right in law in quashing the order under Section 263 of the Income Tax Act, 1961?”

3. With the consent of the counsels, the appeal is taken up for hearing and disposal.

4. The respondent is a company and for the assessment year in question had filed its return of income on 25.10.2005 declaring income of Rs. 4,42,56,640/-. The case was taken up for scrutiny and vide regular assessment order under Section 143(3) dated 27.11.2008 income was determined at Rs.4,42,66,940/-. Addition of Rs.10,300/- was made on the ground that the fee paid to the Registrar of Companies for increase in authorized capital was capital in nature.

5. The Commissioner issued notice under Section 263 of the Act on two grounds: firstly, the respondent had earned dividend income of Rs.28,20,145/- which was exempt from tax but no disallowance of expenditure under Section 14A of the Act was made. Secondly, the respondent-assessee has claimed depreciation on computer software, printers, hub, ticket printers, routers and scanners etc. amounting to Rs.2,49,60,633/- @ 60%, which was allowed by the Assessing Officer without examining whether the said peripherals/items were used for more than 180 days.

6. The Commissioner passed an order directing the Assessing Officer to

examine the said aspects and after affording opportunity to the respondent to pass an order (i) whether any deduction under Section 14A should be made and the amount which should be disallowed as expenditure and (ii) whether or not the assessee had rightly claimed depreciation on the computer peripherals and whether the respondent was entitled to depreciation @ 60% or 30%.

7. The Tribunal has quashed the said order, inter alia, holding that Bombay High Court in the case of **Godrej and Boyce Mfg. Co. Ltd. v. Deputy Commissioner of Income Tax**, (2010) 328 ITR 81 has held that Rule 8D was not retrospective. With regard to depreciation, it has been held that same is admissible @ 60%.

8. Rule 8D has been held to be prospective in nature and applicable from assessment year 2008-09 by this Court in **Maxopp Investment Ltd. v. CIT, New Delhi** in ITA No.687/2009 dated 18.11.2011. However, in the said decision it has been observed that direct and indirect expenses have to be disallowed under Section 14A, when an assessee earns exempt income. In the present case no disallowance was made under Section 14A. In these circumstances, the CIT was justified in invoking supervisory jurisdiction under Section 263 of the Act. The said jurisdiction can be invoked when two conditions are satisfied. If the order by the Assessing Officer is erroneous and prejudicial to the interests of the revenue. An order is erroneous, when the Assessing Officer does not correctly apply a provision or does not make enquiries which are required. When the order passed is contrary to law and not in conformity with the Act, it is erroneous and can be revised by the Commissioner. In the present case Section 14A was not applied and no

disallowance was made by the Assessing Officer, though the assessee is a company and has admittedly earned exempt income of Rs.28,20,145/-. Secondly, in the present case the Assessing Officer had not examined whether the computer peripherals were used for more than 180 days or not.

9. In the case of **Maxopp Investment Ltd.** it has been held that Rule 8D cannot be applied to the assessment year 2005-06. The Assessing Officer will keep the said judgment and the ratio in mind, while dealing with the directions issued by the CIT. This Court has also held that computer peripherals are entitled to depreciation @ 60%. The said judgment will be also kept in mind by the Assessing Officer. The only question, the Assessing Officer is required to consider is whether or not the computer peripherals were used for more than 180 days. This is the limited scrutiny and the enquiry which the Assessing Officer will inquire and examine.

10. We have been informed at the Bar by counsel for the respondent that in spite of the order of the Tribunal dated 16.12.2010, the Assessing Officer had passed an order on 24.12.2010. Learned counsel for the respondent further states that the said order has been quashed by the CIT (A) as it was passed after the order dated 16.12.2010. The revenue has however preferred an appeal before the Tribunal. In these circumstances, counsel for the respondent-assessee states that the Assessing Officer should pass a fresh order in terms of the directions given by this Court and as this Court has set aside the order of the Tribunal. Learned counsel for the revenue in view of the facts stated by the respondent-assessee states that he has no objection in case the Assessing Officer is directed to pass a fresh order. In view of the statements, which are taken on

record, it is directed that the Assessing Officer will pass a fresh order.

11. Accordingly the question of law is answered in negative and against the Assessee and in favour of the Revenue but subject to the directions/observations made above. The appeal is disposed of.

SANJIV KHANNA, J.

R.V.EASWAR, J.

DECEMBER 19, 2011
Mm/Bisht