

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1446 OF 2013

Commissioner of Income Tax 6	}	Appellant
versus		
M/s. Hanil Era Textiles Ltd.	}	Respondent

Mr. Suresh Kumar for the Appellant.
None for the Respondent.

**CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.**

DATED :- APRIL 7, 2015

P.C. :-

This Appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai dated 22nd February, 2013 passed in Income Tax Appeal No. 4128/Mum/2011. The assessment year in question is 2007-08.

2) Mr. Suresh Kumar appearing for the Revenue in support of this Appeal would submit that the question of law at page 3 of the paper book [para 3.8 (a)] is the substantial question of law. Though it is apparently covered by the law laid down by this Court in the case of *Godrej and Boyce Manufacturing Co. Ltd. vs. Deputy Commissioner of Income Tax (2010) 328 ITR 81*, the Tribunal should not have lost sight of the fact that the disallowance was made out of interest expenditure

in proportion of interest attributable to investment related to exempt income.

3) We do not think, upon reading of the Tribunal's order, that it is vitiated by any error of law apparent on the fact of the record. It cannot be termed as perverse because in the return of income declaring total income of Rs.1,32,82,806/-, the Assessing Officer noticed that a sum of Rs.32,74,921/- has been received as dividend and Rs.87,52,106/- as long term capital gains, which has been claimed as exempt under section 10 of the Income Tax Act, 1961. We are only concerned here with the dividend. The Assessing Officer held that certain amount of administrative expenditure was attributable towards earning the dividend income and difficult to accept the contention of the Assessee that no expenditure has been incurred to earn such income. He therefore disallowed the sum of Rs.76,15,743/- under section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962. This order of the Assessing Officer dated 14th December, 2009 was partly set aside in Appeal by the Commissioner. The Commissioner held that even if the Assessing Officer's view is to be maintained, still, the entire claim could not have been disallowed. The Tribunal had taken earlier view that 10% of the dividend earned should be treated as expenditure incurred. Thus, in earning the income of

dividend 10% was set aside towards expenses. This view of the Tribunal was applied and in identical facts by the Commissioner to the present case. Such an approach of the Commissioner and relying upon the law laid down by this Court in the case of *Godrej and Boyce Manufacturing Co. Ltd.* (supra) has not been interfered with in Appeal by the Tribunal.

4) Therefore, we are of the view that no substantial question of law arises in this Appeal, as the issue is clearly answered against the Revenue and in favour of the Assessee by the Division Bench of this Court. The Appeal therefore fails and is dismissed accordingly. No costs.

(A.K.MENON, J.)

(S.C.DHARMADHIKARI, J.)