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

INCOME TAX APPEAL NO. 1026 OF 2014

The Commissioner of Income Tax – 4, Mumbai .. Appellant
Vs.
HSBC Invest Direct (India) Ltd. .. Respondent.

Mr. Ashok Kotangle a/w. Ms. Padma Divakar for the Appellant.
Mr. Atul Jasani for the Respondent.

CORAM : M. S. SANKLECHA AND A. K. MENON, JJ.
DATE : 19th DECEMBER, 2016.

P. C. :

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act)) challenges the order dated 23.08.2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment Year 2006-07.

2. The revenue urges the following questions of law for our consideration.

> *"(A) Whether on the facts and in the circumstance of the case and in law the Tribunal was justified in restricting the disallowance u/s. 14A of the Income Tax Act to the extent of 1% of the dividend income without any reasonable basis which is contrary to the Order of the jurisdictional High Court in the case of Godrej Boyce?"*
> *(B) Whether on the facts and in the circumstance of the case and in law the Tribunal was justified in holding that entrance fee paid to Gymkhana for use of its director was allowable as an expense in spite of the fact that the fees had been paid once and for all and was also in the nature of capital expenditure?"*

3. The tax effect indicated in para 9 of the appeal memo is of Rs.23,00,000/-. Mr. Kotangle, learned counsel appearing for the Revenue states that the tax effect in this appeal is lower than Rs.20,00,000/-. Therefore, the CBDT circular No. 21 of 2013 dated 10.12.2015 would apply and the appeal would not be pressed. However, save the bare statement across the bar, nothing is brought on record by the Revenue indicating that the tax effect involved in the present appeal is less than Rs.20,00,000/-. In fact, this appeal has been adjourned on 16.11.2016, 06.12.2016 and 09.12.2016 at the request of the appellant-Revenue to enable it to file an affidavit indicating that the tax effect in the present appeal is less than Rs.20,00,000/- and not Rs.23,00,000/- as indicated in the appeal memo. However, no affidavit is filed till date. We expected that when this appeal has been adjourned time and again at the request of the Revenue, to enable them to file the affidavit, it would have filed before today. However, no affidavit has been filed. Mr. Kotangle again seeks time to file affidavit. It appears that the officers of the Revenue are not interested in carrying out the directions of the CBDT. It appears that the officers of the Revenue lose interest in the dispute once the appeal is filed by the Revenue before this Court.

4. In the above view, no useful purpose would be served by adjourning the appeal once more. Therefore, we are considering the question as proposed by the Revenue on merits.

5. **Regarding question A**

(a) The impugned order of the Tribunal has allowed the respondent-assessee's appeal by following the decision of this Court in **Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT, 328 ITR 81 (Bom).** In the above case, it has been held that for the assessment years prior to Assessment Year 2008-09, Rule 8D of the Income Tax Rule will not be invoked to work out the disallowance of expenditure under Section 14A of the Act. The Court held that till Assessment Year 2008-2009, the disallowance of expenditure has to be done on a reasonable basis.

(b) The impugned order of the Tribunal on application of the reasonable method, disallowed expenditure to the extent of 1% of exempted dividend income under Section 14A of the Act.

(c) In the above view, as the impugned order of the Tribunal has merely followed the decision of this Court **Godrej & Boyce** (supra) the question proposed does not give rise of any substantial question of law.

6. **Regarding Question B**

(a) The issue raised herein is with regard to the entrance fees paid for club membership being allowed as revenue expenditure. The impugned order of the Tribunal has allowed ex-parte membership fee following the order of this Court in **Otis Elevator Co. (India) Ltd. Vs. CIT, (1992) 195 ITR 682** paid for admission in a club as revenue expenditure.

(b) In the above view, the impugned order of the Tribunal has followed the decision of this Court in **Otis Elevator** (supra). Therefore, the questions as proposed do not give rise to any substantial question of law.

7. The appeal is disposed of in the above terms. No order as to costs.

[A.K. MENON, J.] **[M. S. SANKLECHA, J.]**