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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INCOME TAX APPEAL NO.2342 OF 2013**

DSP Investment Pvt. Ltd.

..Appellant

*Versus*Additional Commissioner of
Income Tax, Range 2(1),
Mumbai.

..Respondent

.....

Mr. Madhur Agarwal a/w Atul Jasani for the Appellant.

Mr. Suresh Kumar for the Respondent.

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**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.****DATE : 8TH MARCH, 2016**

PC.:

1. This Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the “Act”) takes exception to the order dated 10th July, 2013 passed by the Income Tax Appellate Tribunal (“Tribunal”). The impugned order dated 10th July, 2013 relates to Assessment Year 2008-09.

2. The appeal is admitted on the following substantial question of law:-

“Whether on the facts and in the circumstances of the case and in law, was the Tribunal justified in referring to its

co-ordinate Bench decision in J. K. Investors (Bombay) Ltd. being relied upon by the appellant and yet not dealing with the same in the impugned order?”

3. As the controversy on which the appeal has been admitted is within a very narrow compass, at the request of the counsel the appeal itself is taken up for disposal.

4. The appellant is a non-banking finance company. During the subject assessment year appellant had earned dividend income of Rs.13.89 crores which was claimed as exempt from tax under Section 10(34) of the Act. In its return of income the appellant on application of Section 14A of the Act disallowed a sum of Rs.9 lakhs being the expenditure incurred to earn exempt income out of the total expenditure of Rs.2.12 crores incurred. This disallowance of expenditure was worked out in the proportion of taxable income to exempt income of the appellant-assessee.

5. It was the appellant's case before the authorities that in terms of Section 14A of the Act, before Rule 8D of the Income Tax Rules 1961 (Rules) can be applied to disallow expenditure incurred to earn exempt income, the Assessing Officer in terms of Section 14A(2) of the Act must record his non satisfaction with the claim of disallowance, if any, made by

the appellant-assessee. In this case, it is the appellant's contention that before rejecting the disallowance of expenditure made by it, the Assessing Officer has not recorded his non satisfaction of the disallowance of expenditure done by the appellant. In support of its aforesaid contention, the appellant placed reliance upon the decision of an co-ordinate Bench of the Tribunal in J.K. Investors (Bombay) Ltd. V/s. Assistant Commissioner of Income Tax (ITA No.7858/MUM/2011) decided on 13th March, 2013.

6. In fact the impugned order of the Tribunal in paragraph 6 thereof does record the appellant's reliance upon the decision of the Court of its co-ordinate Bench in J. K. Investors (supra). However, thereafter the impugned order does not deal with the appellant's reliance upon the decision of the Tribunal in J.K. Investors (supra) while dismissing the appellant-assessee's appeal before it. In fact the impugned order of the Tribunal ought to have dealt with its decision in J. K. Investors (supra) and considered its applicability to the present facts.

7. In view of the fact that the impugned order of the Tribunal does not deal with its decision in J. K. Investors (supra) relied upon by the appellant-assessee in support of its submission as recorded in the impugned order itself makes the impugned order a non-speaking order and, therefore, in breach of principles of natural justice. In the above

view, the substantial question of law is answered in the affirmative i.e. in favour of the appellant-assessee and against the revenue. However, the issue of applicability of Rule 8D of the Rules or otherwise has yet to be determined by the Tribunal. In these circumstances, we set aside the impugned order dated 10th July, 2013 passed by the Tribunal and restore the entire appeal to the Tribunal for fresh disposal in accordance with law. All contentions of both sides left open.

8. The appeal is disposed of in accordance with law.

9. No order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)