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

INCOME TAX APPEAL NO. 701 OF 2014

Reliance Infrastructure Ltd. .. Appellant

v/s.

The Dy. Commissioner of Income Tax,
Circle 10(1), Mumbai .. Respondent

Mr. R. Muralidhar a/w Mr. Rajesh Shah i/b Rajesh Shah & Co. for the appellant
Mr. Suresh Kumar a/w Ms. Padma Divakar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 29th NOVEMBER, 2016.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 19th July, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 19th July, 2013 relates to Assessment Year 2008-09.

2. Mr. Murlidhar, learned Counsel appearing for the assessee urges only the following re-framed question of law for our consideration :-

"Whether on the facts and in the circumstances of the case and

in law, was the Tribunal justified in ignoring the appellant's submission (as recorded in the impugned order) that the issue stands concluded by the decision of this Court in Commissioner of Income Tax Vs. Reliance Utilities and Power Ltd. 313 ITR 340 in its favour without having considered the same while dismissing the appellant's appeal ?

3. The appeal is admitted on the above substantial question of law.

4. As the controversy is within a narrow compass, at the request of the Counsel, the appeal itself is taken up for final disposal.

5. The respondent assessee during the subject assessment year, had earned dividend income of Rs.23.80 crores which it claimed was exempt under Section 10 of the Act. In the above view, the respondent offered dis-allowance of expenditure under Section 14A of the Act to the tune of Rs.5.46 crores. The Assessing Officer did not accept the same and in terms of Rule 8D of the Income Tax Rule, worked out the total dis-allowance at Rs.71.04 crores. The respondent assessee pointed out that the reserve available with it at the beginning of the year was Rs.9339 crores while investment made in the aggregate including during the subject assessment year was Rs.7947 crores. In

the above view, the respondent placed reliance upon the decision of this Court in ***Commissioner of Income Tax Vs. Reliance Utilities and Powers Ltd. 313 ITR 340*** wherein this Court has held that where the assessee has its own interest free funds available then it should be presumed that the investment has been first made out of interest free funds. This submission of the respondent assessee has been recorded in the impugned order of the Tribunal. However, we find that the same has not been considered while dismissing the respondent assessee's appeal.

6. This non-dealing with the decision of this Court in *Reliance Utilities and Power Ltd.* (supra) by the Tribunal even after recording the reliance upon the same by the respondent assessee would make the impugned order suspect. *Ex facie*, it is a breach of principles of natural justice. Thus, the question is answered in the negative i.e. in favour of the appellant assessee and against the Revenue.

7. In the aforesaid circumstances, the impugned order dated 19th July, 2013 is set aside and the entire appeal is restored to the Tribunal for fresh disposal in accordance with law.

8. The appeal is disposed of in the above terms. All contentions of both the parties are left open.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**