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

INCOME TAX APPEAL NO.785 OF 2015
WITH
INCOME TAX APPEAL NO. 789 OF 2015

The Principal Commissioner of Income Tax – 8. … Appellant

Versus

M/s. Zee News Ltd. …Respondent

Mr. Suresh Kumar, for the Appellant.
Mr. Sanjiv Shah, for the Respondent.

CORAM: M.S.SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATED: 5TH FEBRUARY 2018.

PC:-

1. These two Appeals under Section 260-A of the Income Tax Act, 1961 (the Act), challenge the common order dated 17th December 2014 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2008-09, 2009-10 & 2010-11. These two Appeals by the Revenue challenge the common impugned order dated 17th December 2014 in respect of Assessment Year 2008-09 & 2009-10.

2 The Revenue urges the following question of law for our consideration:

(a) "Whether on the facts and in the circumstance of the case and in law, the Tribunal is correct in

> *holding that since on similar facts no additions were made u/s. 14A in respect investments in subsidiary company, no addition by way of disallowance u/s. 14A could be made in A.Y. 2008-09 and 2009-10, in violation of Rule of consistency?"*
>
> *(b) "Whether on the facts and in the circumstance of the case and in law, the Tribunal is correct in holding that Section 14A is not applicable to the case of investments in the case of subsidiary company because the purpose was not to earn dividend income but to increase controlling stake?"*
>
> *(c) "Whether on the facts and in the circumstance of the case and in law, the Tribunal is correct in distinguishing between the investments in subsidiary company for controlling stake and non-controlling stake to decide the applicability of Section 14A of the Act?"*

3 We find that the impugned order of the Tribunal has recorded a finding of fact that in the subject Assessment Year no income in the form of dividend or otherwise was claimed as exempt income by the Respondent – Assessee. The impugned order of the Tribunal placed reliance upon the decisions of Gujarat High Court in the case of ***CIT Vs. Corrtech Energy (P) Ltd.***[1], and Punjab & Haryana in the case of ***CIT Vs. Winsome Textile Industries Ltd.***[2]***,*** to hold that no dis-allowance under Section 14A can be made in the absence of the Assessee claiming any income to be exempt in the subject Assessment Year.

4. The aforesaid finding by the Tribunal has been accepted by

1 (2014) 223 Taxman 130/45.

2 (2009) 319 ITR 204 (Punjab & Haryana) the Revenue. Therefore, it is not a subject matter of challenge before us. In fact, a similar issue had been raised by the Revenue in the case of ***Pr. CIT Vs. M/s. Rivian International (P.) Ltd.***[3] where this Court following the decision of the Delhi High Court in the case of ***CIT Vs. Holcim India (P.) Ltd.***[4] and decision in the case of ***CIT Vs. Shivam Motors (P.) Ltd.***[5] has held that if for the relevant Assessment Year, Assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for dis-allowance.

5. In view of the fact that, the Revenue is not challenging the above finding of the Tribunal on the above issue the questions as framed for our consideration by the Revenue become academic. Therefore, none of the question give rise to any substantial questions of law in the context of the present facts.

6. Accordingly, **Appeal dismissed.** No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA,J.)**

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3 ITXA No. 693 of 2015 decided on 21st November 2017.

4 (2015) 57 Taxman.com 28.

5 (2015) 230 Taxman 0063.