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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 1107/2018

THE PR. COMMISSIONER OF INCOME TAX -5 ..... Appellant

Through Mr. Ruchir Bhatia, Advocate.

versus

JBM AUTO LTD. ..... Respondent

Through

ITA No. 5769/Del/2014 & ITA No. 6618/Del/2014.
[Assessment Year-2011-12]

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **22.10.2018**

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961('Act' for short) in the case of JBM Auto Limited relates to the Assessment Year 2011-12 and arises from the order of the Income Tax Appellate Tribunal dated 26th April, 2018 in ITA Nos. 5769/Del/2014 and 6618/Del/2014.

The first issue raised by the Revenue pertains to disallowance under Section 14A of the Act. It is accepted and admitted that the assessee had not earned any exempt income in this year. In these circumstances, following the ratio of the decisions of this Court in ***Commissioner of Income Tax-IV versus Holcim India Private Limited,*** (2014) 272 CTR 282 (Delhi) and ***Cheminvest Limited versus Commissioner of Income Tax-VI,*** (2015) 378 ITR 33(Del) and our decision of the even date in ITA No. 725/2018, ***Principal Commissioner of Income Tax-6, New Delhi versus Mcdonald's India Private Limited,*** no substantial question of law arises as the issue is covered by the aforesaid decisions against the Revenue.

The second issue raised in the present case relates to the alleged failure on the part of the assessee in deducting TDS on listing and custodian fee of Rs.1,48,905/- paid to National Stock Exchange, Bombay Stock Exchange and National Securities Depository Limited. The Assessing Officer had disallowed the said expenditure invoking Section 40(a)(ia) on the ground that the assessee had failed to deduct TDS under Section194J of the Act. This issue whether TDS was required to be deducted is covered against the Revenue vide decision of the Supreme Court in ***Commissioner of Income Tax Vs. Kotak Securities Limited*** (2016) 383 ITR 1 (SC).

Supreme Court in ***Commissioner of Income Tax v. Kotak Securities Limited*** (supra) has held that Section 194J is attracted when an assessee avails of specialized, exclusive and individual services and not when it avails of common general facilities and services which are faceless, screen based transactions. Accordingly, membership fee for listing and custodian fee paid to a stock exchange would not be covered by the definition of the term "technical services" under Section 194J of the Act on which TDS was required to be deducted.

In view of the aforesaid position, no substantial question arises for consideration and the appeal is accordingly dismissed

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 22, 2018 MR/ssn