

|                                                |     |            |
|------------------------------------------------|-----|------------|
| Pr. Commissioner of Income Tax,<br>Central – 2 | ... | Appellant  |
| versus                                         |     |            |
| M/s. Red Chillies Entertainment Pvt. Ltd.      | ... | Respondent |

**CORAM: AKIL KURESHI &  
S.J. KATHAWALLA, JJ.**

P.C.:

1. This Appeal is filed by the Revenue to challenge the Judgment of the Income Tax Appellate Tribunal (“the Tribunal” for short). The following question is presented for our consideration :

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in holding that no disallowance should be made u/s. 14A r.w.r. 8D, if exempt income had not been earned for the year under scrutiny ?

2. The question is self-explanatory and the issue involved is squarely covered by the decision of the Division Bench of this Court dated 30-01-2019 in Income Tax Appeal No.1619 of 2016. Revenue's appeal was dismissed making the following

observations :

*“5. This question relates to disallowance made by the Assessing Officer under Section 14A of the Income Tax Act, 1961 r/w Rule 8D of the Rules of the Expenditure incurred by the assessee for earning exempt income. The Tribunal by the judgment which is impugned in this appeal held that the assessee had not earned any exempt income during the year under consideration. The Tribunal, therefore, followed the decision of Delhi High Court in the case of CIT Vs/ Holcim India (Pvt.) Ltd. (2014) 272 CTR 282. In such decision, the Delhi High Court ruled that when there is no exempt income earned by the assessee, no disallowance under Section 14A of the Act, can be made. It is pointed out to us that this Court in Income Tax Appeal No.693 of 2015 in case of **Principal CIT Vs. M/s. Rivian International (P) Ltd.**, by order dated 21.11.2017, following the judgment of Delhi High Court in case of Holcim India (P) Ltd. (supra), has adopted the same principle making following observations :-*

*“3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On fact, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the said Act. In other words, Section 14A provides that if there is an income which does not form a part of the*

*total income under the said Act, the expenditure which is incurred for earning the income is not an allowable deduction. Therefore, during the relevant year, if the assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for disallowance.*

*4. We respectfully concur with the view taken by the Delhi High Court as the said view can always be taken on fair reading of Section 14A of the said Act. A Division Bench of Allahabad High Court has also taken a similar view in the case of Commissioner of Income Tax V/s. Shivam Motors (P) Ltd. (supra). Hence, in our view, no fault can be found with the impugned judgment of the Appellate Tribunal whereby dis-allowance under Section 14A was ordered to be deleted. No substantial question of law arises. Appeal is, accordingly, dismissed.”*

*6. Counsel for the assessee also brought to our notice the fact that the Supreme Court in case of CIT Vs. Chettinad Logistics (P) Ltd. 95 taxmann.com 250 has dismissed the Revenue's SLP against the judgment of the Delhi High Court in Holcim India (P) Ltd. (supra), taking a similar view. This additional question is, therefore, not entertained.”*

3. In the result, the Income Tax Appeal is dismissed.

( S.J.KATHAWALLA, J. )

( AKIL KURESHI, J. )