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

INCOME TAX APPEAL NO. 1672 OF 2016

The Pr. Commissioner of Income Tax-10 .. Appellant

v/s.

HSBC Invest Direct (India) Ltd. .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Sameer Dalal for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 4th FEBRUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following question for our consideration :-

> *"(i) Whether the order of the Tribunal is perverse in law as it ignored the disallowance computed by the auditors of the assessee which was in accordance with the section 14A of the Income Tax read with Rule 8D of the Act?"*

2. The respondent assessee is a limited company. In the return of income filed for Assessment Year 2009-10, the question of making disallowance to the expenditure claimed by the assessee in terms of

Section 14A of the Income Tax Act, 1961 ("the Act" for short) read with Rule 8D of the Rules, came up for consideration. During the assessment in the appellate proceedings, the assessee offered restricted disallowance of Rs.1.30 crores. The Tribunal however raised two contentions, firstly that the statutory auditors in the report had made disallowance of Rs.2.53 crores and secondly that in view of the assessee's income which was exempt, the disallowance had to be made in terms of Rule 8D of the Rules.

3. The Tribunal in the impugned judgment rejecting the contentions, placed reliance on the decision of Delhi High Court in case of ***Cheminvest Ltd. Vs. Commissioner of Income Tax, 378 ITR 33*** in which it was held that when the assessee had not earned any income which was exempt from tax, the disallowance of the expenditure under Section 14A of the Act read with Rule 8D of the Rules, wsould not arise.

4. Having heard learned Counsel for the parties and perused documents on record, we notice that in *Cheminvest Ltd.* (supra) Delhi High Court had referred to and relied upon its earlier decision in the case of ***CIT Vs. Holcim India (P) Ltd***. (I.T.A. No. 486 of 2014, decided on 5th September 2014). We further notice that this Court in Income

Tax Appeal No.693 of 2015 by an order dated 21st November, 2017 while dismissing the Revenue's appeal on similar issue had noted that the decision of Delhi High Court in case of Holcim India (P) Ltd. (supra) had adopted the same principles. In the present case, Counsel for the Revenue however, points out that this is not a case where the assessee had earned no income which was exempt from tax. However, in our opinion, the ratio of the above noted decisions in the cases of Cheminvest Ltd and Holcim India (P) Ltd. (supra) would include a facet where the assessee's income exempt from tax is not NIL but has earned exempt income which is larger than the expenditure incurred by the assessee in order to earn such income. In such a situation that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration. We do not find any error in the view of the Tribunal. We record that the assessee had offered voluntary disallowance of expenditure of Rs.1.30 crores, which is not been disturbed by the Tribunal.

5. The tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**