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

\+ ITA 396/2019 & CM Nos.18429-30/2019

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

Through : Mr. Ruchir Bhatia, Sr. Standing Counsel with Mr. Puneet Rai, Adv.

versus

JBM AUTO LTD ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **22.04.2019**

The questions of law sought to be urged in the present appeal by the Revenue under Section 260A of the Income Tax Act for Assessment Year 2012-13, were the subject matter of a previous appeal (ITA No.1107/2018, The Principal Commissioner of Income Tax-5 v. JBM Auto Ltd. decided on 22.10.2018) for A.Y.2011-12. The court had dismissed the Revenue's appeal with the following reasons :

> *"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."

This court in the above order held that no substantial question of law arises for consideration, which applies in the present case as well. Accordingly, no question of law arises in the present appeal which is hereby dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 22, 2019
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