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

INCOME TAX APPEAL NO.1260 OF 2009

The Commissioner of Income Tax, Central II, Mumbai ..Appellant.

Versus

K. Raheja Corporation P Limited ..Respondents.

Mr.B.M. Chatterjee for the appellant.

Mr.P.J. Pardiwala, Senior Advocate with Ms.Savita Vedpathak /by Maneksha & Sethna for the respondent.

**CORAM : J.P. Devadhar &
A.A. Sayed, JJ.**

DATE : 8th August, 2011.

P.C. :

1. Whether the Income Tax Appellate Tribunal was justified in deleting the dis-allowance of interest amounting to Rs.2.79 crores made by the assessing officer under Section 14A of the Income Tax Act, 1961 is the question raised in this appeal.

2. The assessment year involved herein is assessment year 2000-01.

3. In the assessment year in question, the assessee had earned dividend income amounting to Rs.13,35,770/- from the investments of more than Rs.20 crores made in equity shares, mutual funds etc from assessment

year 1994-95 onwards.

4. In the assessment year in question, the assessee had claimed deduction of interest amounting to Rs.8.70 crores on borrowed funds utilized for the business. Out of the said amount of interest, the assessing officer disallowed interest amounting to Rs.2.79 crores on the ground that the said amount was relatable to earning dividend income which are exempt under Section 10(33) of the Income Tax Act, 1961 (as it then stood) and hence disallowable under Section 14A of the Act.

5. The finding of fact recorded by the Income Tax Appellate Tribunal is that the investments in equity shares and mutual funds were made by the assessee during the assessment years 1994-95 till 1998-99 and it has been consistently held by the Income Tax Appellate Tribunal that these investments have been made out of the assessee's own funds and not out of the borrowed funds. Even the investments made in the assessment year 1999-2000 have been held by the Income Tax Appellate tribunal to be out of assessee's own funds and not out of borrowed funds by its order dated 24th June 2011. Save and except contending that Section 14A was not on the statute book when the Income Tax Appellate Tribunal passed orders in the assessment years prior to the assessment year in question, Counsel for the Revenue could not point as to how interest on borrowed funds to the extent of Rs.2.79 crores was attributable to earning dividend income which are exempt under Section 10(33) of the Act (as it then stood). Therefore, in the

facts of the present case, in the absence of any material or basis to hold that the interest expenditure directly or indirectly was attributable for earning the dividend income, the decision of the Income Tax Appellate Tribunal in deleting the dis-allowance of interest made under Section 14A of the Act cannot be faulted.

6. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

(A.A. Sayed, J.)

(J.P. Devadhar, J.)