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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1131 OF 2013

The Commissioner of Income Tax-9, Mumbai

..Appellant.

V/s.

India Advantage Securities Ltd.

..Respondent.

Mr.Suresh Kumar with Ms.Padma Divakar for the appellant.

Mr. Satish Mody with Ms.Aasifa Khan for the respondent.

**CORAM : S.C.DHARMADHIKARI AND
A.K. MENON, JJ.****DATED : 17TH MARCH, 2015****P.C. :-**

After arguing this appeal for some time and on certain queries from this Court, Mr.Suresh Kumar seeks time. He desires to obtain instructions with regard to the computation of income and how the exercise was carried out for complying with rule 8(D)(ii) of the Income Tax Rules. Thus, whether with rule 8(D)(ii) and in terms referred by the Commissioner has been invoked and applied or that figures which are required to be taken as per this sub-rule are not taken by the assessing officer. Mr.Suresh Kumar wants to verify the same by referring to the original record in possession of the assessing officer. At the request of Mr.Suresh Kumar, stand over to 7th April, 2015.

(A.K. MENON, J.)**(S.C.DHARMADHIKARI, J.)**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1131 OF 2013

The Commissioner of Income
Tax-9 Appellant
Vs.
India Advantage Securities
Ltd. Respondent

Mr. Suresh Kumar i/b Ms Padma Divakar
for the Appellant.
Mr. Satish Mody with Ms Aasifa Khan for
the Respondent.

CORAM: S.C. DHARMADHIKARI &
A.K. MENON, JJ.

DATE: APRIL 13, 2015

P.C.:

1. Heard both sides. At the earlier occasion we had granted time to Mr. Suresh Kumar to seek instructions from the Assessing Officer and on some specific point, namely, whether Rule 8D(ii) of the Income Tax Rules, 1962 was correctly applied or not?

2. Despite granting an adjournment of nearly four weeks, Mr. Suresh Kumar is not able to obtain instructions. He states that there is a restructuring of the Department and that is why he is unable to obtain any instruction.

3. We do not wish to grant any further time to Mr. Suresh Kumar to verify a factual issue. The Revenue submits that the two questions at page 3 of the paper-book are substantial questions of law, as they arise out of the Tribunal's order dated 14-9-2012.

4. We find that the Tribunal has confirmed the order of the Commissioner of Income Tax (Appeals). At page 19 of the paper-book (para 4 of the Commissioner's order), the Commissioner took into account the words of the Rule and found that the figures as derived by

the Assessing Officer cannot be taken into consideration. One can at best disallow the expenses which are incurred for earning dividend income. For that purpose, the figures under the head "Investment" could be taken and some charges apportioned for the purpose of computing the expenses. The Commissioner found from such figures, that only 10% of the income earned could be apportioned towards expenses for earning the dividend income. He, therefore, made a revised disallowance.

5. It is this revised disallowance which has been accepted by the Tribunal. We do not find that both the questions of law can be termed as substantial simply because the first one is covered against the Revenue by a Judgment of this Court in the case of **Godrej & Boyce Mfg. Co. Ltd. vs. Dy.CIT, Income Tax Appeal No.626 of 2010 and Writ Petition No.758**

of 2010. The Questions have been decided by this Court. Both the authorities in this case have followed this Judgment and applied Section 14A of the Income Tax Act, 1961 and Rule 8D of the Income Tax Rules, 1962. They have been applied correctly. The first question is, therefore, not a substantial question of law at all.

6. The second question pertains to the application of the Rule and which raises a pure factual issue. We find that the Commissioner, as also the Tribunal's order is neither perverse nor vitiated by any error of law apparent on the face of the record, and as noted above. Therefore, this Appeal does not raise any substantial question of law. It is devoid of merits and is dismissed. No costs.

(A.K. MENON, J.)

(S.C. DHARMADHIKARI, J.)