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

\+ **ITA 1254/2018, ITA 1255/2018, ITA 1256/2018, ITA 1257/2018, ITA 1258/2018 and ITA 1259/2018**

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -2

..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue

Versus

M/S. ACB INDIA LTD. ..... Respondent

Through: Mr. Rohit Jain and Mr. Aniket D. Agrawal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **27.11.2018**

CM No. 46980/2018 in ITA 1254/2018
CM No. 46981/2018 in ITA 1255/2018
CM No. 46982/2018 in ITA 1256/2018
CM No. 46983/2018 in ITA 1257/2018
CM No. 46984/2018 in ITA 1258/2018
CM No. 46985/2018 inITA 1259/2018

Applications for condonation of delay are allowed as they are not opposed.

CM No. 49263/2018 in ITA 1255/2018
CM No. 49277/2018 in ITA 1256/2018
CM No. 49282/2018 in ITA 1257/2018
CM No. 49271/2018 in ITA 1258/2018
CM No. 49292/2018 inITA 1259/2018

These applications for placing the correct orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals) are also allowed.

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ITA Nos. 1255/2018 and 1257/2018

These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' for short) in the case of ACB India Private Limited relate to the Assessment Year 2011-12.

2. The Assessing Officer, invoking clause (ii) of Sub-Rule 2 to Rule 8D of the Income Tax Rules, 1962, had made disallowance of Rs. 39,05,855/- under Section 14A of the Act, being one-half per cent of of the average of the total investment of Rs.78,11,71,066/- made by the respondent-assessee as on 1st April, 2010 and on 31st March, 2011.

3. Total exempt income earned by the respondent-assessee during the year in form of dividend income was Rs. 47,950/-. The exempt income of Rs. 47,950/- was less than 0.666% of the appellants total income of Rs.795,12,40,999/-. Further, the amount of disallowance was more than 8000% of the exempt income earned.

4. The Commissioner of Income Tax (Appeals) had computed the disallowance by taking average of the dividend yielding investment at the beginning and at the end of the Assessment Year 2011-12. On this computation, expenditure of Rs.1,644/- was disallowed under Section 14A of the Act.

5. Income Tax Appellate Tribunal has upheld the first appellate order relying on the Delhi High Court decision in the case of the respondent-assessee for the Assessment year 2008-09 reported as ***ACB India Limited v. Assistant Commissioner of Income Tax*** (2015) 374 ITR 108 (Delhi).

6. In the aforesaid factual background, we are not inclined to issue notice in the appeals for the assessment year 2011-12. They are dismissed without any order as to costs.

ITA Nos.1254/2018, 1256/2018, 1258/2018 and 1259/2018:

7. Facts in respect of the Assessment year 2012-13 and 2013-14 are

different and reasoning given by the Income Tax Appellate Tribunal wou require consideration in view of the ratio in ***Maxopp Investment Limited versus Commissioner of Income Tax (2018)*** 402 ITR 640 (SC). Accordingly, we direct issue of notice in ITA Nos. 1254/2018, 1256/2018, 1258/2018 and 1259/2018 which relate to the Assessment Years 2012-13 and 2013-14.

8. Learned counsel for the respondent, who appears on advance notice, accepts notice.

9. Re-list on 6th March, 2019.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 27, 2018
MR