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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 566/2023**

PR. COMMISSIONER OF INCOME TAX Appellant
Through: Mr Sanjeev Menon, Standing
Counsel.

versus

DCM SHRIRAM LTD Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

09.10.2023

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Physical Hearing/Hybrid Hearing (as per request)]

CM No. 51970/2023

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three (3) days before the next date of hearing.

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2. This appeal concerns Assessment Year (AY) 2014-15.

3. *Via*, the instant appeal, the appellant/revenue seeks to assail the order dated 28.10.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

4. The appellant/revenue has proposed the following questions of law for the consideration by the court:

"A. Whether on the facts and circumstances of the case and law, the Hon'ble ITAT has erred in law and on facts in deleting the

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adjustment proposed by the TPO on account of ALP adjustment of specified domestic transactions from Associated Enterprises for the A.Y 2014-15?

B. Whether ITAT was right in deleting adjustments made on account of transfer of power as per the provision of section 92F r.w.s 80IA of the Act without appreciating that there was suitable selling CUP rate from the central agency in the field of power trading?

C. Whether ITAT was right in deleting adjustments made on account of transfer of steam from eligible unit to non-eligible unit ignoring the fact that the steam is only the by-product of the business of the assessee and cost of the same has already been included in the cost of power generation of the assessee?

D. Whether on facts and in circumstances of the case and law, the Hon'ble ITAT erred in law and on facts in deleting addition amounting to Rs. 91,49,571 /- made by the AO on account of disallowance u/s 14A r.w. Rule 8D of the IT Act, 1961?

E. Whether on facts and in the circumstances of the case and law, the Hon'ble ITAT erred in law and on facts in allowing additional ground raised by the assessee for deduction of education cess amounting to Rs. 1,33,41,210/- claimed by the assessee u/s 37 of the IT Act?"

5. Insofar as question no. "D" is concerned, the Tribunal has returned the following finding of fact in paragraph 50 of its order. For convenience, the said paragraph is extracted hereafter:

"50. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered the

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various judicial precedents cited before us. In fact [sic...], undeniably the assessee has interest free funds available which are 12.82 times higher than the amount of investments. Thus Where [sic] assessee had its surplus fund against which investment was made, no question of making any disallowance of expenditure in respect of interest expenses under section 14A arose - Principal CIT v. Sintex Industries Ltd. [2017] 82 taxmann.com 171 (Guj.) [SLP dismissed in Principal CIT v. Sintex Industries Ltd. [2018] 93 taxmann.com 24 / 255 Taxman 171 [SC]. Further for working out the portion of administrative expenditure, assessee has applied the factor of 0.5 % on the amount f [sic...of] investments which has yielded tax-free income during the year. We find that this stand of assessee is also in consonance with the decision of Honourable Delhi High court in ACB India limited v. Act 314 ITR 108 [Del]. In view of this we direct the ld AO to retain the disallowance offered by assessee as disallowance u/s 14 A of the Act only to the extent of Rs. 6,399,219/- which is offered by the assessee itself and delete the balance. Accordingly Ground no 4 of the appeal is allowed.”

6. Having regard to the same, according to us, insofar as proposed question no. “D” is concerned, no substantial question of law arises for our consideration.
7. Regarding the remaining questions, issue notice to the respondent/assessee *via* all modes, including email before the next date of hearing.
8. List the matter on 14.12.2023.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 9, 2023/R.Y

[Click here to check corrigendum, if any](#)