



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

INCOME TAX APPEAL NO. 10 OF 2020

Pr. Commissioner of Income Tax-2

.. Appellant

Versus

Tata Realty & Infrastructure Ltd.

.. Respondent

Adv. Abhishek Mishra, for the Appellant.

Adv. Sukhsagar Syal, i/b Mint and Confreres, for the Respondent.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JANUARY 28, 2026

P. C.

1. This Appeal is filed by the Revenue challenging the order passed by the ITAT dated 9th May 2019.

2. According to the Revenue, the following 3 questions of law arise for our consideration:-

“i. Whether on the facts and circumstance of th case and in law, the Hon’ble ITAT was right in holding that the provisions of section 14A will not be applicable when there is no exempt income earned by the assessee during the year failing to appreciate the clarification in Board’s Circular

No. 5/2014 dated 11.02.2014 wherein it is clearly laid down that expenses which are relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether any such income has been earned during the Financial Year or not?

ii. Whether on the facts and circumstance of the case and in law, the Hon'ble ITAT was correct in not noticing CBDT Circular No. 5/2024 when it is judicially acknowledged that CBDT Circulars constitute important clarifications of legislative intent?

iii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in holding that the expenditure on amortization of tenancy right is not of Capital nature failing to appreciate that the tenancy right acquired by the assessee has resulted in an enduring benefit?"

3. As far as questions (i) and (ii) are concerned, we find that the same are squarely covered by a decision of this Court in the case of ***Principal Commissioner of Income Tax-7 Vs. Morgan Stanley India Securities P Ltd [Income Tax Appeal No. 1701 of 2017 decided on 21st January 2020]***. Questions (i) and (ii), as raised in the present Appeal, are the exact questions that were raised for the consideration of this Court in Income Tax Appeal No. 1701 of 2017. The Division Bench of this Court in the case of *Morgan Stanley India Securities P Ltd (Income Tax*

Appeal No. 1701 of 2017) has clearly held that where there was no exempt income that was earned in the relevant Assessment Year, the question of disallowance under Section 14A would not arise. They drew support from a view taken by this Court in the ***Income Tax Appeal No. 266 of 2017 [Principal Commissioner of Income Tax -3 Vs. M/s. India Debt Management Pvt Ltd, decided on 15th April 2019]***.

4. Once we find that the issues raised in questions (i) and (ii) above are squarely covered by the decision of this Court in *Morgan Stanley India Securities P Ltd (supra)*, we do not find that questions (i) and (ii) give rise to any substantial questions of law.

5. As far as question (iii) is concerned, we find that this issue also does not give rise to any substantial question of law. On this particular issue, the findings of the Tribunal can be found in paragraphs 10 to 14 of the impugned order. The Tribunal, in fact, held that the compensation paid by the Assessee of Rs.2.5 Crores to *Brandon and Company Pvt. Ltd.* for vacating the premises occupied by them and availing of the said premises on a leave and license basis for a period of 60 months on the same terms at which said premises were given by *Ewart Investments Ltd* to *Brandon and Company Pvt. Ltd.* amounted to a Revenue expenditure and not a capital expenditure as held by the Assessing Officer. The Tribunal, to come to this conclusion,

placed reliance on the decision of the Hon'ble Supreme Court in the case of ***CIT Vs. Madras Auto Service (P) Ltd. (1998) 99 Taxman 575 (SC); 1998 233 ITR 468 (SC).***

6. After going through the impugned order as well as the decision of the Hon'ble Supreme Court in the *Madras Auto Service (P) Ltd. (supra)*, we do not find anything objectionable in the findings given by the Tribunal, as well CIT (Appeals), that the compensation of Rs.2.5 Crores paid by the Assessee to *Brandon and Company Pvt. Ltd.* is nothing but a Revenue expenditure.

7. We accordingly find that question (iii) also does not give rise to any substantial question of law. Accordingly, the above Appeal is dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.

8. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]