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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 819/2015

**THE PR. COMMISSIONER OF INCOME TAX
CENTRAL-3**

..... Appellant

Through: Mr. Rahul Chaudhary and Mr. Ruchir
Bhatia, Advocates.

versus

CELLCAP INVOFIN INDIA PVT. LTD.

..... Respondent

Through: Ms. Kavita Jha and Ms. Roopali Gupta,
Advocates.

AND

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ITA 823/2015

**THE PR. COMMISSIONER OF INCOME TAX
CENTRAL -3**

..... Appellant

Through: Mr. Rahul Chaudhary and Mr. Ruchir
Bhatia, Advocates.

versus

**CELLPHONE CREDITS & CREDITS SECURITIES PVT.
LTD.**

..... Respondent

Through: Ms. Kavita Jha and Ms. Roopali Gupta,
Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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30.10.2015

CM No. 24906 of 2015(exemption) in ITA No. 823 of 2015

ITA Nos. 819 & 823 of 2015

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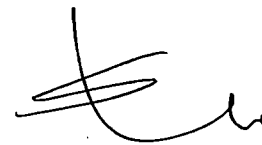
1. Exemptions allowed subject to all just exceptions.
2. The application is disposed of.

ITA Nos. 819 of 2015 & 823 of 2015

3. These two appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are directed against a common order dated 17th April 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 4364 and 4365/Del/2013 for Assessment Year ('AY') 2009-10.
4. Both the Assesseees are non-banking finance companies. In the return of income both Assesseees had shown dividend income and claimed that 1% of the expenses had been incurred as administrative and statutory expenses and, therefore, should not be disallowed for the purposes of Section 14A of the Income Tax Act, 1961 ('Act') read with Rule 8-D of the Income Tax Rules, 1962 ('Rules').
5. The Assessing Officer ('AO') formed an opinion that the Assesseees had not furnished the correct particulars of income and proceeded to levy a penalty under Section 271 (1) (c) of the Act. The Commissioner of Income Tax (Appeals) ['CIT (A)'] deleted the penalty levied by the AO and the Revenue went in appeal before the ITAT. The ground on which the ITAT

dismissed the Revenue's appeal was that nowhere in the assessment order or in the penalty order did the AO record that the Assessee's claims were false. It was noted that the Rule 8D of the Rules would come into play only when the AO records a finding that, having regard to the accounts of the Assessee, he was not satisfied with the correctness of the claims of the Assessee in respect of the expenditure in relation to income which does not form part of the total income. Reliance was placed by the ITAT on the decision of the Supreme Court in *CIT v. Reliance Petro Products Pvt. Ltd.* [2010] 189 *Taxman* 322.

6. Having heard learned counsel for the Revenue and having considered the orders of the CIT (A) as well as the ITAT, the Court finds that both decisions are based on the correct understanding of the legal position and that in the facts of the present case, no substantial question of law arises for determination. The appeals are dismissed.



S. MURALIDHAR, J



VIBHU BAKHRU, J

OCTOBER 30, 2015/dn