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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 310/2016**

THE PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant
Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr.Raghvendra Singh, Advocate.

versus

INFO ELDGE INDIA LTD. ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% 13.05.2016

<u>CM No. 17436 of 2016 (for condonation of delay)</u>

1. For the reasons stated therein, the delay in filing the appeal is condoned.

2. The application is disposed of.

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3. This appeal by the Revenue is directed against the order dated 31st July 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1896/Del/2013 for the Assessment Year ('AY') 2007-08.

4. The ITAT has in the impugned order following the decision of this Court in ***Maxopp Investment Ltd. v. CIT (2012) 347 ITR 272 (Del)*** deleted the disallowance made by the Assessing Officer ('AO') under Section 14A of the Income Tax Act, 1961 ('Act') by applying Rule 8D of the Income Tax

Rules, 1962 (‘Rules’).

5. Two points were urged by learned counsel for the Revenue. The first was that the observations in the decision of ***Maxopp Investment*** *(supra)* to the effect that the AO has to record reasons as to why the claim of the Assessee in respect of the expenditure incurred for making the investment for the purposes of Section 14A should be discarded was only *obiter dicta* and therefore not a binding precedent as far as the ITAT was concerned.

6. This Court is not prepared to entertain the above plea. The above decision of the ***Maxopp Investment*** *(supra)*specific to the issue of AO having to record reasons prior to making a disallowance under Section 14-A of the Act has been consistently followed not only by this Court in subsequent decisions but by the ITAT as well. In any event, the Court is informed that the Revenue's Special Leave Petition against the decision in ***Maxopp Investment*** *(supra)* is pending consideration in the Supreme Court.

7. The second point urged is that that even assuming that the AO wrongly applied Rule 8D of the Rules, since it is, as held in ***Maxopp Investment*** *(supra)*, prospective and not applicable to the AY in question, the ITAT ought to have remanded the matter to the AO for fresh determination.

8. The Court is unable to agree with the above submission. Apart from the fact that no specific question in that regard has been raised in the memorandum of the present appeal, the Court finds that the AO applied Rule 8D of the Rules after being unable to determine what expenditure was incurred by the Assessee for the purposes of Section 14A. Therefore,

remanding the issue to the AO would have served no useful purpose.

9. No substantial question of law arises.

10. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 13, 2016
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