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

\+ ITA 456/2016

THE PR. COMMISSIONER OF INCOME TAX -4 ..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing Counsel and Mr.Puneet Rai, Jr.Standing Counsel

versus

INTERGLOBE ENTERPRISES LTD. ..... Respondent

Through: Ms.Bhavita Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

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

% 19.08.2016

1. Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) whereby the appellate commissioner's order was partly set aside. It is urged that a substantial question of law as to the method adopted by the AO under Section 14A of the Act read with Rule 8 (D) is involved. The assessee had during the relevant year i.e. AY 2010-2011 declared certain amounts as tax exempt. Seeking to disallow amounts under Section 14A read with Rule 8D, the AO brought to tax an amount of ₹77.97 lakhs. The assessee's appeal succeeded partially, in that the appellate commissioner restricted the disallowance to ₹65.81 lakhs. The ITAT in its impugned order was of the opinion that the application of Rule 8D was made in a faulty manner. It was noticed that the disallowance on account of expenditure incurred for the exempt income can be restricted on those

investments only where the assessee had earned exempt income.

2. The revenue's contention is that the ITAT fell into error in not noticing that the total value of investments was in excess of ₹135 crores and consequently a proper application of Section 8D (iii) meant that Rs.65.81 lakhs was justifiably disallowed.

3. This court finds no merit in the revenue's contention. Rule 8D (iii) clearly postulates that in the calculation of the disallowance amount, "an amount equal to one-half percent of the value of the investment, income from which does not or shall not form part of the total income....." should be taken into consideration. Thus, it is not all investment but only that which is expressly spelt out in Rule 8D (iii) which is to be reckoned for the purpose of calculation of average of half percent. Having regard to these circumstances, we are of the opinion that no question of law arises.

4. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 19, 2016

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