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

6,7,10

\+ **ITA 399/2016**

PR CIT-7 ..... Appellant

Through:Mr.P. Roy Chaudhuri, Senior Standing counsel

versus

POWER MACHINES INDIA LTD ..... Respondent

With

\+ **ITA 400/2016**

PR CIT-7 ..... Appellant

Through:Mr.P. Roy Chaudhuri, Senior Standing counsel

versus

POWER MACHINES INDIA LTD (FORMERLY KNOWN AS LMZ ENERGY INDIA LTD ..... Respondent

And

\+ **ITA 426/2016**

PR CIT-7 ..... Appellant

Through:Mr.P. Roy Chaudhuri, Senior Standing counsel

versus

POWER MACHINES INDIA LTD ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

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ORDER

% 28.07.2016

CM No. 25313 of 2016(exemption) in ITA No. 399 of 2016
CM No. 25314 of 2016 (exemption) in ITA No. 400 of 2016

1. Allowed, subject to all just exceptions.

ITA No. 399 of 2016, ITA No. 400 of 2016 & ITA No. 426 of 2016

2. These appeals by the Revenue are directed against the common order dated 5th February 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3834/Del/2009, 53/Del/2011 and 1815/Del/2011 for the Assessment Years ('AYs) 2006-07, 2007-08 and 2008-09 respectively.

3. One common question that is urged by the Revenue is regarding the ITAT having upheld the order of the Commissioner of Income Tax (Appeals) ('CIT(A)') who deleted the addition made by the Assessing Officer ('AO') on account of the commission paid on the bank guarantee issued by the VTB bank. As pointed out by the CIT (A), there was no warrant for treating the bank guarantee commission as a payment of interest in terms of Section 2(28A) of the Act. The bank guarantee commission paid to the foreign bank could not have been disallowed under Section 40(a)(i) of the Act on the above basis. The Court is unable to find any legal infirmity in the above determination by the CIT(A) which has been affirmed by the ITAT.

4. As far as the other issue concerning the method of accounting, learned counsel for the Revenue does not dispute that the method of accounting has been consistently followed by the Assessee and has been accepted by the Revenue for the AYs previous to and subsequent to the AYs in question.

Consequently, this Court does not see any reason to frame any question on this issue as well.

5. The appeals are dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 28, 2016
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