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

\+ **ITA 359/2017**

CHIEF COMMISSIONER OF INCOME TAX (OSD), (CENTRAL)-2 ..... Appellant

Through: Mr. Sanjay Kumar & Mr. Dilip Shivpuri, Advocates

versus

MINDA INDUSTRIES LTD. .....Respondent

Through: None

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

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

% **31.05.2017**

<u>CM No. 16906/2017</u>

1. For the reasons stated therein, the application is allowed. Delay of 12 days in filing the appeal is condoned.

<u>ITA No. 359/2017</u>

2. This is an appeal by the Revenue directed against the order dated 28th October, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3260/Del/2013 for the Assessment Year 2009-10. The questions that have been urged by the Revenue for consideration are as under:

> "A. Whether the Ld. ITAT was correct in law in allowing the claim of the assessee that no expenditure incurred liable to disallowed u/s 14A of the I.T. Act, 1961 without appreciating that circular No.5/20 14 dated 1 1.02.2014 clarifies that the disallowance u/s 14A read with Rule 8D is required to be made even if the assessee had not earned any exempt income in a particular year and especially when the assessee itself had disallowed Rs.3,47,775/-?

> B. Whether the Ld. ITAT was correct in law in allowing the claim of corporate expenses amounting to Rs.65,00,29/- without appreciating that the expenses were incurred by the assessee for new business in a new country having no connection with the existing business of the company?"

3. As far as question A is concerned, it is covered by several judgments of this Court, including ***Cheminvest Ltd. v. Commissioner of Income Tax, (2015) 378 ITR 33 (Del)***. Consequently, the Court is not inclined to frame a question of law issue as far as question A is concerned.

4. As far as question B is concerned, learned counsel for the Revenue referred to Section 37(1) of the Income Tax Act, 1961 and contended that if the Assessee had succeeded in commencing a new business, then it could be treated as capital expenditure, but the failure to do so did not mean that the Assessee could claim it as revenue expenditure. The Court does not agree with the above submission. The possibility of commencing a new business in a new country cannot be an activity unconnected with the business of the Assessee.

5. No question of law arises for consideration. The appeal is dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 31, 2017/tp