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

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**ITA 779/2017**

PR. COMMOSSIONER OF INCOME TAX-7

..... Appellant

Through: Mr Sanjay Kumar, Advocate

versus

OSCAR INVESTMENT LTD.

..... Respondent

Through: None

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**09.10.2017**

1. This is an appeal by the Revenue against an order dated 9<sup>th</sup> February 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4088/Del./2014 for the Assessment Year ('AY') 2011-12.

2. The question sought to be urged by the Revenue is as under:

“Whether on facts and in the circumstances of the case the Ld. ITAT was correct in law in holding that the Disallowance U/s 14A has to be limited 10 the quantum of income not forming pan of the Total income of the assessee even when clear, explicit and unambiguous provisions of section 14A read with Rule 8D do not stipulate any such condition?”

3. In *Joint Investments Pvt. Ltd. v. Commissioner of Income Tax [2015] 372 ITR 694 (Delhi)* wherein this Court held as under:

“9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing Rs. 2,97,440/- as

a disallowance under Section 14A had to be rejected. Taikisha says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000/- the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs. 52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."

4. In that view of the matter, the aforementioned question stands answered against the Revenue and in favour of the Assessee.

5. The appeal is accordingly dismissed.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

**OCTOBER 09, 2017**

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