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

\+ ITA 949/2017, CM APPL.40194-40196/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-2
..... Appellant
Through: Mr. Rahul Kaushik, Advocate.

versus

BHARTI OVERSEAS PVT. LTD. (FORMERLY KNOWN AS BHARTI ENTERPRISES (HOLDINGS) PVT. LTD.) ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

% **08.11.2017**

1. The questions sought to be urged by the Revenue in this appeal under Section 260A of the Income Tax Act, 1961 is whether the Tribunal (ITAT) fell into error in its appreciation concerning the exempt income under Section 14A and the disallowance attributable to it.

2. The facts of this case are peculiar; the AO had disallowed a sum of ₹2,79,02,402/- under Section 14A of the Income Tax Act, 1961, after calculating the formula prescribed under Rule 8D(2) of the Income Tax Rules. This figure was modified to just over ₹37 lakhs by the CIT (A). The ITAT confirmed that in the first round of litigation which ended with its order dated 23.03.2015. The Revenue carried the matter in appeal (ITA 802/2015) before this Court.

3. By a detailed judgment delivered on 17.12.2015, this Court

concluded that the approach adopted by the lower authorities was in accord with law. It pointedly turned down the arguments with respect to ITAT's lack of findings concerning Rule 8D(2) (iii) upholding that the point had not been urged.

4. The Revenue sought to reopen the matter entirely by approaching the ITAT under Section 254 urging that rectification was essential. The impugned order dismissed that application noting that the High Court specifically recorded that no argument in respect of Rule 8D (2) (iii) had been made.

5. The Revenue urges that the ITAT was duty bound to go into the matter once this Court recorded that the question had not been urged and that since it had omitted to return the finding in the first round, it was bound to do so.

6. This Court is of the opinion that no error of law can be attributable to the ITAT; the discussion in the main judgment of this Court of 17.12.2015 clearly shows that the entire disallowance under Section 14A was at large.

7. Having regard to these circumstances, the Court is of the opinion that no substantial question of law arises; the appeal is consequently dismissed, along with pending applications.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 08, 2017/*vikas*/