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

+ ITA 1157/2017
ITA 1158/2017, CM APPL.46231/2017

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 1
..... Appellant
Through: Mr. Sanjay Kumar, Jr. Standing Counsel.

versus

BHUSHAN ENERGY LTD. Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

% **ORDER**
19.12.2017

The revenue appeals the decision of the Income Tax Appellate Tribunal (“ITAT”) which granted complete relief to the assessee. The CIT (A) afforded partial relief by setting aside a disallowance in excess of ₹9 crores made by the Assessing Officer (“AO”) under Section 14A of the Income Tax Act, 1961. The CIT (A) had brought down the disallowance to a figure of just over ₹76 lakhs.

The assessee was engaged in the business of power generation for which purpose it had partly borrowed amounts from public financial institutions. Consequently, it had to service the equipments/machinery. A portion of its funds were surplus which was invested during the ongoing industrial activity of setting up a

plant. The income earned from such investment was exempt from tax. Apparently, the assessee offered the entire amount, i.e., just over ₹1.75 lakhs as disallowance under Section 14A of the Act. The AO rejected this expenditure holding that it had no reasonable nexus with the real expenditure incurred by the assessee. The AO applied the formula indicated in Rule 8D (ii) & (iii) of the Income Tax Rules and disallowed over ₹9.28 crores. The CIT (A) granted partial relief after analysing the decision but upholding the rejection of the disallowance by the AO offered by the assessee. The ITAT in the impugned judgment granted complete relief to the assessee on the strength of the two judgments of this Court, i.e., *Joint Investment Pvt. Ltd. v. CIT* (2015) 372 ITR 694 (Delhi) and *Cheminvest Vs. Commissioner of Income Tax* 378 ITR 33.

This Court is of the opinion that the entire exempt income in the present case was purely incidental, consequent of the deployment of surplus funds for a part of the period. The findings of the CIT (A) clearly point to the fact that the assessee had utilised the entire borrowed funds for the purpose of setting up of its plan and undertaking the industrial activity. In these circumstances, the disallowance offered - of the entire exempt income - could not have been reasonably rejected. While on this, this Court notices that the opinion offered by the AO of rejecting the disallowance offered by the assessee has to be reasonable. It is not sufficient that rejection occurs leading to automatic application of principles embodied in Rule 8D. The rejection has to satisfy the test of reasonableness. Clearly in this case it did not.

No substantial question of law, therefore, arises. The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

DECEMBER 19, 2017
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