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

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**ITA 592/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX-07

..... Appellant

Through: Mr Sanjay Kumar, Junior Standing  
Counsel

versus

ORIENTAL BANK OF COMMERCE

..... Respondent

Through: None

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**ITA 594/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX-07

..... Appellant

Through: Mr Sanjay Kumar, Junior Standing  
Counsel

versus

ORIENTAL BANK OF COMMERCE

..... Respondent

Through: None

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**13.10.2017**

1. These are two appeals by the Revenue against the common order dated 27<sup>th</sup> December, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 242/Del/2014 and 243/Del/2014 for the Assessment Years ('AYs') 2008-09 and 2009-10.

2. The question sought to be urged in the present appeals is whether the



ITAT erred in concurring with the Commissioner of Income Tax (Appeals) ['CIT(A)'] in restricting the disallowance made by the Assessing Officer ('AO') under Section 14A read with Rule 8D towards expenditure incurred in making investments that yielded exempt income.

3. Mr Sanjay Kumar, learned Junior Standing Counsel for the Revenue has focussed on the deletion by the CIT (A) of disallowance made by the AO of indirect 'interest expenditure' in terms of Rule 8D(2) (ii) of the Income Tax Rules, 1962 ('Rules'). He placed reliance on the decision of this Court in *Pr. Commissioner of Income-tax, Delhi-2 v. Bharti Overseas (P) Ltd. [2015] 64 taxmann.com 340 (Delhi)* to urge that once there was any interest expenditure incurred, the presumption of part of it having been incurred for making the investment in terms of Rule 8D(2) (ii) of the Rules stood attracted.

4. However, the Court finds that in the present case, the CIT(A) has rightly commented that the AO has not, as mandated by Rule 8D (1) of the Rules, examined the accounts of the Assessee before concluding that the claim of the Assessee that it incurred no interest expenditure for the purposes of making investments was untrue. On the contrary, the CIT(A) notes that the Assessee has throughout been asserting that it had more than sufficient interest free fund for the purposes of making investments. There was no occasion for the Assessee to incur any interest expenditure for the purpose. It is this factual finding that has been concurred with by the ITAT.

5. The net result is that without complying with Rule 8D (1) of the Rules by recording that he is not satisfied with the correctness of the Assessee's



assertion that “no expenditure has been incurred has been incurred in relation to the exempt income”, the AO could not have straightway proceeded to draw a presumption and apply Rule 8D (ii)(2) of the Rules that some interest expenditure should have been incurred by the Assessee for the purposes of making investments which yielded exempt income.

6. The orders passed by the CIT(A) and the ITAT do not suffer from any legal infirmity.

7. No substantial question of law arises in these appeals and the same are accordingly dismissed but, in the circumstances, with no orders as to costs.

A handwritten signature in black ink, appearing to be 'S. Muralidhar', is written above the printed name.

S.MURALIDHAR, J.

A handwritten signature in black ink, appearing to be 'Prathiba', is written above the printed name.

PRATHIBA M. SINGH, J.

OCTOBER 13, 2017  
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